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THE EARLY DEVELOPMENT OF THE LAW OF NEUTRAL RIGHTS

ON the theory that attention should be focused on the "delegalization" or "outlawry" of war, not much attention is now being devoted in the United States to the international law of belligerent and neutral rights.[1] When the subject is discussed, the argument usually turns upon the "new" conditions in the last war and upon the abandonment of the classical rules.[2]

Those who champion the classical rules usually go back to the time of Lord Stowell (the end of the eighteenth century) but rarely to earlier times. Lord Stowell undoubtedly has had enormous influence, both because of his judicial fairness and because of the clarity and learning of his opinions. The fact that the regular publication of the prize court reports begins with Stowell's time has also contributed to his fame. But it is a mistake to assume that Stowell, any more than Sir Samuel Evans, blazed new trails or faced novel problems. Such an assumption would seem almost to lead to the conclusion that the problem of adjusting neutral and belligerent rights did not arise prior to the close of the eighteenth century,

[1] *Cf.* Wright, *Research in International Law Since the War* (Carnegie Endowment for International Peace, 1930), 24 *et seq.*

[2] The fallacy of assuming that the practices and conditions of 1914-1918 were innovations has been clearly demonstrated by John Bassett Moore in *International Law and Some Current Illusions* (1924) and in "Post-war International Law", 27 *Columbia Law Review*, (1927) 400. *Cf.* "Violations of Maritime Law by the Allied Powers during the World War" by Trimble in 24 *American Journal of International Law*, (1930) 79, and by Garner in 25 *idem*, (1931) 26.

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or else that previously there was no international *societas* and therefore no *ius inter gentes*.[3]

The problem has always been the reconciliation of the incompatible interests of neutrals and belligerents, or, rather, a compromise between these irreconcilable interests. The neutral has sought to maintain his freedom of trade; the belligerent has sought to cut off all supplies from his enemy. The desire to seize goods of the enemy may be ascribed to either or both of two purposes: (1) weakening the enemy by striking at both his import and export trade and thus contributing to his defeat; (2) obtaining supplies of which the capturing state is in need. In the sixteenth and seventeenth centuries an additional reason may have been self-enrichment, motivated by the prevailing mercantilist doctrines which, particularly in the form of what is now known as bullionism, emphasized the undesirability of permitting money to go out of the country and thus must have welcomed the accumulation of goods by right of belligerent capture as distinguished from purchase. In the early period also, belligerents relied extensively on privateers who profited largely from the prize money received, thus adding the motive of personal gain to the interests of the state.

In the process of adjustment between the belligerent's right to capture and the neutral's right to trade freely, there developed certain rules which were generally accepted in principle though modified from time to time in detail. "Diversity of opinion as to method [or detail] is not to be taken as establishing the absence of general acquiescence as to principle."[4] Among the most elementary of these rules was the belligerent's right to seize the property of his enemy. The rules of contraband, blockade, unneutral service, etc., seem to have been of

[3] There is no intention to slight the contributions made by many scholars to the early history of this subject. Yet, despite many useful contributions, there is still a vast deal to be done in the history of international law. The present writers make no pretense to having exhausted even the narrow field of their immediate inquiry and are conscious of many *lacunae* in their evidence and its presentation.

[4] 1 Hyde, *International Law* (1922), 3, note 2.

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rather later development. This study is confined to this earliest of rules.[5]

In appraising the events of earlier times, it is essential to evaluate international practices in the light of contemporary conditions. To view them as if they occurred in an international society such as now exists inevitably results in misconstruction. It must be recalled that the modern system of international law traces its origins to a time when the strongly centralized national state was in an embryonic stage; when the distinction between peace and war was in a state of continuous adumbration; when warfare at sea was waged not by state navies so much as by privateers and other private adventurers. Perhaps the seventeenth century includes the period of most significant early development and in this century there were only four years of general peace in Europe.[6] Rules governing the rights of neutrals and belligerents thus had ample opportunity for development by the trial and error method.[7]

On the other hand, it is necessary to bear in mind, with respect to the development of prize law, that prize courts were established and functioned under detailed rules of procedure from at least the middle of the sixteenth century. This fact is not to be attributed to any zeal for justice, but rather to the desire to assure the collection of the *droits* of admiralty, or percentage due to the Admiral or other government officer for prizes taken by privateers.[8]

[5] A study of the early development of the law of other neutral and belligerent rights is in progress.

[6] Clark, *The Seventeenth Century* (1929), 98. The international lawyer's debt to Mr. Clark deserves acknowledgment. His book just cited, and his *The Dutch Alliance and the War against French Trade* (1923) are invaluable contributions to the history of international law.

[7] "What the seventeenth century did for international law as a factor in the life of states was not so much to make their relations more legal and regular in their main lines as to give them a great body of experience in the regular and legal handling of minor questions. In big things, even in the larger matters of international law, each state was a law to itself, but in small things each tended more and more to follow a generally accepted system of forms." Clark, *The Seventeenth Century*, 131.

[8] The rules of procedure and evidence applied by prize courts have frequently determined the success or failure of the claims of neutrals. Recent disputes

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It may be well to suggest a distinction between the factors contributing to the creation of these rules of international law and the factors conditioning their application. It is apparent that economic necessities and opportunities and political alignments moved the states of the sixteenth and seventeenth centuries to embrace and advocate particular rules. But the rules having once come into vogue often developed into a servant stronger than the master. The rules became part of the factual situation which statesmen had to take into account in shaping their policies from time to time. This was true because the rules were themselves the reflection of economic and political realities.

It is obvious that within the limits of this article it is impossible to give an adequate historical perspective of the complex period covered by this investigation. But we may point to a few factors upon which national attitudes were predicated during the sixteenth and seventeenth centuries. In respect of rules governing the capture of private property at sea, one would naturally expect to find the attitude of a carrier nation different from that of a nation shipping its goods in foreign bottoms. A state dependent on the importation of foreign products[9] would not see eye to eye with a state which was self-sufficient. The possession of an efficient navy might lead to the assertion of views which a state lacking naval power would combat.[10] The exigencies of situations produced by political alliances, deemed momentarily essential to the state's existence, might result in temporary deviation from a prevailing economic or commercial interest, but by and large, such interests controlled national viewpoints to a considerable extent.[11]

regarding the applicability of international law to the procedural side of prize law have generally disregarded the large amount of data available for the pre-Stowell period.

[9] Spain's reliance on the ship-building products of the Baltic is a conspicuous example.

[10] England vigorously opposed certain rules espoused by the Armed Neutralities at the close of the eighteenth century because, as she said, they were contrary to "those principles of maritime law on which the naval power of the British Empire in great measure rests".

[11] "The question of the rights of neutral shipping in time of war, for in-

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So long as notions of prize law have existed, it has never been doubted that enemy goods in enemy ships are good prize. As early as 1495 the *Consolato del Mare* could complacently declare:

> If an armed ship or cruiser meet with a merchant vessel, belonging to an enemy and carrying a cargo, the property of an enemy, common sense will sufficiently point out what is to be done: it is, therefore, unnecessary to lay down any rules for such a case.[12]

A problem therefore arises only in respect of the two cases of enemy goods in neutral ships and neutral goods in enemy ships. Concerning the case of enemy goods in friends' (neutral) ships, the *Consolato* provides that the goods are subject to confiscation though the vessel is not. On the other hand, friends' goods on enemy ships were not *ipso facto* subject to confiscation, though the ship was. Thus the *Consolato*

stance, was one amongst the causes which drove the English into wars with both the French and the Dutch. And, although in the settlements of these questions one treaty often followed the lines laid down by another between other powers, it is impossible to trace any decided progress toward the general acceptance of any one system of regulating them. At the end of the century, as at the beginning, the Dutch stood, on the whole, for the principle of restricting the interference of war with commerce and allowing as much commerce to go on as was not directly to the advantage of their enemies alone; while the English stood for the principle of suppressing and diverting and controlling commerce in every way that could be made harmful to their enemies and tolerable to the rest of the world." Clark, *loc. cit.*

[12] The *Consolato del Mare* is a compendium of commercial practices and maritime law as they existed at the end of the fifteenth century. The original edition seems to have been written in Catalan and published in Barcelona in 1494. It has been translated in many languages. Its author is unknown and opinions differ as to the exact time when the compilation was made. It does not seem that the *Consolato* was a promulgated code or collection of promulgated laws. It differs greatly both in form and drafting from the laws of that period. In all probability it was compiled for the use of those entrusted with the settlement of commercial litigations. As to the history of the *Consolato* see: Pardessus, *Us et coutumes de la mer* (Paris, 1847), vol. II, 4 *et seq.*, chap. xii; Boucher, *Consulat de la mer* (Paris, 1808), Introduction.

The above quotation is from chap. 276 of the *Consolato*—the so-called prize chapter. It may be noted that in Robinson's English translation published in 1800, and quoted by Wheaton, *The History of the Law of Nations* (1845), 63, the prize chapter is numbered 273.

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adopted neither the rule "free ships, free goods" nor the rule "enemy ships, enemy goods"—indeed, these rules did not make their appearance until much later—but, on the contrary, determined separately the fate of the goods and of the ship by the ownership of each. The rules described above indicate a rather liberal policy toward the property of neutrals.[13] The neutral could ship his goods in enemy bottoms without subjecting them to confiscation and could use his ship to carry enemy goods without risking loss of the ship itself.

There was a complete departure from these rules in the French Marine Ordinance of 1543,[14] which was promulgated during the war with Emperor Charles V at the time when Henry VIII of England entered the war on the side of the Emperor.

François I therein laid it down that if the ships of his own subjects, allies or friends carried enemy goods, or if the goods of subjects, allies or friends were carried in enemy ships, both ships and cargoes should be good prize. The adoption of this rule may have been due to the practice of neutrals in "coloring" enemy goods.[15] Under this rule, the only safe trade remaining open to the neutral merchant was the shipment of his goods in a neutral bottom and the neutral shipowner could

[13] Where enemy goods are seized on a friend's ship, the *Consolato* requires the captor to pay the ship the whole freight which she would have earned at her delivery port. And if the captor require the neutral ship to carry the cargo to some other port to be discharged there, appropriate compensation must be paid. Where an enemy ship is captured, carrying friend's goods, the captor is to attempt an amicable agreement with the cargo owner as to compensation. If the merchant refuses to reach an agreement, the captor may send the vessel to one of his own ports and the merchant must pay the freight earned by the vessel. But if the captor refuse to agree, he shall be liable in damages. It may be noted that the rule of the *Consolato* survives as late as 1622, in the treaty between the Netherlands and Algiers, Art. VIII; V Du Mont, *Corps universel diplomatique du droit des gens,* ii, 413 (hereinafter cited "Du Mont").

[14] 12 *Recueil général des anciennes lois françaises* (hereinafter cited "*Rec. gén.*"), 854 *et seq.*

[15] See English Proclamation of Aug. 19, 1536, warning English subjects against such practice while Henry VIII was neutral in the war between France and the Empire. Harl. MSS. 442 F. 99, 1 Marsden, *Law and Custom of the Sea,* 149 (hereinafter cited "Marsden").

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safely carry only neutral goods. It is an embodiment of the rules "enemy ships, enemy goods" and "enemy goods, enemy ships" and an exclusion of the rule "free ships, free goods". The rule was reaffirmed in the same terms by Article 69 of the Marine Ordinance of March 15, 1584,[16] when, during the War of Liberation in the Netherlands, France and England were both opposing Spain. Some eighty years later, Sir Leoline Jenkins remarked that this rule laid down in the French ordinance "hath been complained of, and written against by Publick Ministers and learned Men, upon the first publishing of it, as an Encroachment and Violation of the Natural Freedom of Commerce."[17] He referred to the case of a Hamburg (neutral) ship, seized with enemy goods on board and released by a sentence of the *Parlement de Paris* in 1592.[18] The sentence declared the rule of the ordinance was abrogated by disuse, "having never obtained in judicial determination" since its first publication in 1543. He also called attention to departures from the rule in the subsequent ordinances of Dec. 19, 1639, June 15, 1645, Jan. 21, 1650 and Feb. 1, 1650,[19] as well as in various treaties. Jenkins, however, did not make the same objection to the rule "enemy ships, enemy goods", since in his day that rule was accepted by England.[20]

[16] 14 *Rec. gén.*, 556 *et seq.*

[17] 2 Wynne, *Life of Sir Leoline Jenkins*, 718, 720 (hereinafter cited "Wynne") in an opinion to the Right Honourable the Lords of the Committee for Grievances, Nov. 10, 1668, case of the *Ahasuerus*. *Cf.* legal opinion of the English Admiralty judges in 1544; S.P. Dom. Mary, vol. 4, No. 42, 1 Marsden, 158. See also the French statement in 1655, *infra*, p. 494.

[18] What appears to be the same case is referred to in the brief (*Mémoire*) for the claimants in the case of the *Sainct Sauveur*, before the French courts in 1648; Bib. Nat. Mss. F. 18592, 560. The sentence of the Parlement is contained in the "Extrait des Registres du Parlement", Bib. Nat. Mss. fr. 16731, at p. 32.

[19] The first three of these ordinances have not been located; for the ordinance of 1650 see *infra*, p. 492.

[20] ". . . by the modern usages of war (contrary to the old law of nations) unfree ships make the lading unfree. . . ." Report of Jenkins on the petition of Simpson, March 10, 1674/5, Br. Rec. Off. State Papers 9/4.

Loccenius, in his *De Jure Maritimo et Navali* (Stockholm, 1651), Lib. ii,

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In the treaties of this period, one may not profitably look for statements of general principles, but rather for bargains between particular states to satisfy particular needs. Thus in 1510 England and France agreed that the merchants of Venice, Florence and Genoa might freely trade in goods belonging to themselves or others, in ships of their own or of others, without any impediment.[21] This indicates the interest of both states in the commerce then largely carried on by the Italian cities. In later treaties during the sixteenth century between the same two states, there are general provisions to the effect that neither state will interfere with the ships of the other.[22] Such stipulations imply a reciprocal application of the rule "free ships, free goods".[23] These treaties are not to be considered as indicating the general attitude of either party toward their right to confiscate goods or vessels captured at sea; for various, but largely political or economic reasons, special privileges are extended to the property of merchants and ships from certain states. With the kaleidoscopic changes in political alignments and changes in economic theory and necessity, the treaties undergo corresponding changes.

In the Capitulations of 1604[24] which the Sublime Porte agreed upon with Henry IV of France, the French secured from the Turks a promise that they would not seize the goods of an enemy when carried on a French ship. The French did not give a reciprocal undertaking, but while maintaining for

ch. iv, § xi, suggests that goods on enemy vessels are merely presumed, from the place in which they are found, to be enemy property; the presumption, in his opinion, was rebuttable.

[21] IV Du Mont i, 125. This was during the period of the French invasion of Italy. Venice was defeated by Louis XII in alliance with Maximilian, Ferdinand the Catholic and Pope Julius II in 1508. In 1511, the year after this Anglo-French agreement, Henry VIII joined Venice, the Papacy and Maximilian in an attempt to drive the French out of Italy.

[22] 1559, V Du Mont i. 31, Art. V; 1564, *ibid.*, 126, 127; these provisions were omitted from the 1572 treaty, *ibid.*, 211 *et seq.*

[23] Similar provisions are found in the special agreement of 1596 between France and Holland (*ibid.*, 531, 540, Art. XIII).

[24] 1 Noradounghian, *Recueil d'actes internationaux de l'Empire Ottoman* (1897), 93.

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themselves the position affirmed in the Marine Ordinances, secured from the Turks the benefit of the rule "free ships, free goods". Article IV of these capitulations gives the same rights to other European states.[25]

Meanwhile, the French Ordinances were not without their effect abroad. In 1557, while England and Spain were at war with France, an English Order in Council was issued in terms practically identical with the Marine Ordinance of 1543. But this was purely a matter of reprisal.[26] This retaliatory practice was reiterated three years later, just after England made peace with France, on the apparent ground that English subjects were being discouraged from fitting out ships to cruise the seas because goods on enemy ships captured were claimed to be free as the property of allies and the English captors thus were deprived of part of their prize. These claims of allies were thought to have been the result of collusion with the enemy. To encourage English privateering, the French rule was reiterated but now made of general application to all enemy vessels, the result being the full adoption of the doctrine "enemy ships, enemy goods", and "enemy goods, enemy ships".[27]

In the face of protests of the northern neutrals, however, concessions were made to them.[28] In 1590, during the war with Spain, Elizabeth issued an order permitting a limited number of Dutch ships to trade with Spain under certain conditions, which included a prohibition against carrying goods which were "contraband".[29] In 1601, Sir Julius Caesar

[25] For subsequent treaties of other powers with the Sublime Porte, see 1 Noradounghian, *op. cit., passim.*

[26] "The Frenshemen have lawes and doe putt the same in execution against the subjects of this realme whiche the counsell thinke convenient to be kepte lykewyse towardes them." 2 Marsden, *Select Pleas in the Court of Admiralty* (Selden Soc., 1897) (hereinafter cited "Select Pleas"), 22. File 27, Hil. No. 59; Adm. Ct. Libels 28, No. 59, 1 Marsden, 165.

[27] 2 *Select Pleas,* 119-120; *cf. ibid.,* p. xviii.

[28] See, in general, Cheyney, "International Law under Queen Elizabeth", 20 *English Historical Review* (1905), 659.

[29] Cotton Mss. Galba D. VII, f. 144, in 1 Marsden, 262. "Contraband" at this period probably meant merely "prohibited"; its technical connotation in international law had not yet developed.

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adjudged Spanish (enemy) goods in a Dutch (neutral) ship lawful prize, but the ship was apparently released.[80] In 1600 a German (neutral) ship was restored with that part of her cargo which was German-owned, but some Spanish goods in the cargo were condemned as good prize.[81] In a case decided in 1602, Sir Julius Caesar released neutral (Venetian) goods on an enemy (Spanish) ship when the vessel and the rest of her cargo were condemned.[82] At this same time (about 1601), however, Elizabeth proclaimed a complete prohibition on all trade to Spain, noting that the Spanish could not carry on war without outside help.[83] In 1602, a proclamation was drafted, ordering that the ships of allies and friends should go free, but making specific exception of those laden with enemies' goods.[84] Free ships, therefore, would not make free goods, but it is not known whether this proclamation was ever actually issued.

The Spanish, however, during their wars with England and France at the end of the sixteenth century, applied the rules "free ships, free goods" and "enemy ships, enemy goods". In 1586, two years before the destruction of the Armada, a Scotch (neutral) ship with English (enemy) goods on board, was freed under a Spanish statute, but an English ship together with the Scotch goods on board was condemned.[85]

In 1630 the English Lords Commissioners of the Admiralty were instructed to study a petition from Hamburg that freight be allowed to Hamburg ships carrying enemy goods which

[80] Adm. Ct. Libels 68, No. 60, in 1 Marsden, 311.

[81] Adm. Ct. Libels 68, No. 178, 177, 1 Marsden, 302, 306.

[82] Adm. Ct. Libels 69, No. 155, 1 Marsden, 325.

[83] Adm. Mss. 36767, f. 31, in 1 Marsden, 313.

[84] There is also an exception based on a rudimentary theory of contraband. The text of the draft is in Robinson, *Collectanea Maritima,* 21, 25, par. 2. See also Cheyney, *op. cit.* It is interesting to note how Elizabeth relied on the "law of nations".

[85] Statement by Francisco Tassis as to the practice of the Spanish Admiralty in condemning as prize all goods captured in an unfree (enemy) ship; Adm. Court, Examinations 26, 13th April, 1587, 1 Marsden, 249. The witness was an Italian giving evidence in a case before Sir Julius Caesar, judge of the English High Court of Admiralty.

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were seized. The *Consolato* had stated this rule.[86] The Lords Commissioners approved the petition, not only for Hamburg ships, but for the ships of all the allies of England provided that the voyage was not merely between two Spanish ports, in which case both ships and goods were to be forfeit, because this was not neutral commerce, but merely service for hire.[87] But they rejected another request that the goods of Hamburgers and other friends in enemies' ships should be free, because by the law of the realm enemy ships make enemy goods and because the abandonment of that rule would tend to encourage the coloring of enemies' goods. In other words, England conceded to the neutral carrier freight on enemy cargoes, but gave no privilege to neutral goods in enemy bottoms.[88]

In 1646 the Netherlands, being at war with Spain but on friendly terms with France, succeeded in securing a relaxation of the French Marine Ordinance of 1584. By Article I of the treaty of that year it was agreed that for a period of four years and in anticipation of a definite regulation, the operation of the French ordinance was suspended to the extent of applying thereafter the rule "free ships, free goods" to Netherlands vessels.[89] The rule "enemy ships, enemy goods" remained in force; the Dutch, being at the time great carriers, did not need to be concerned with the infrequent case of Dutch goods carried in enemy bottoms. Two years later, just at

[86] *Supra,* note 13.

[87] See a receipt for freight paid on Spanish iron captured in a Hamburg ship, signed by the master of the ship and dated Aug. 15, 1657, Adm. Ct. Instance Papers 7, 2 Marsden 35.

[88] The Hamburgers apparently were careful to make arrangements with the English to protect their shipping in time of war; see, for example, Jenkins' letter of May 18, 1672 to the Earl of Arlington, "concerning the war time practice of Hamburg", 2 Wynne 738-9.

[89] Manning says that the French later repudiated this obvious interpretation of the treaty, informing Boreel, the Dutch Ambassador, in 1653, that they merely agreed to waive the rule of infection, *i. e.* "enemy goods, enemy ship", *Commentaries on the Law of Nations,* Amos's (1875) ed., 316. The French Prize Courts at this time seem to have been kindly disposed toward the Northern neutrals; see, for example, the case of the *St. Pierre* (1648), Bib. Nat. Mss. F. 18592, 408.

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the close of the Thirty Years War, the Netherlands also secured the same agreement with Spain.[40] By Article XVI of this Spanish-Dutch treaty, the Hanse Towns were given all the privileges accorded to the Dutch.[41]

It may have been the soothing influence of the Peace of Westphalia, terminating the Thirty Years War, which led Louis XIV to issue a declaration on February 1, 1650 wherein it was provided that friends' goods should be restored when taken on an enemy's ship. Friends' ships were to be protected by their passports.[42]

The agreement in favor of the Dutch was relied on by neutral claimants of property in the French Prize Courts. The English master of the English ship *Chien-Leurier* referred to it in arguing that the rule of the old ordinances was *hors d'usage*. He cites several sentences of the *Conseil de Marine* and of the *Conseil d'Enhaut* to the effect that friends' ships will not be condemned for carrying enemy goods. He also states that the same rule was abandoned by the Spaniards as too unjust and barbarous.[43]

It was the same interest of the Dutch in the carrying trade referred to above, that made their reaction so vigorous against Cromwell's Navigation Act of 1651.[44] But at the close of the ensuing war, the Dutch did not succeed in introducing the rule "free ships, free goods" into the treaty. In the subsequent war with Spain, English seizures of Dutch ships

[40] VI Du Mont i, 429. This agreement was confirmed with Spain in 1650, *ibid.*, i, 570.

[41] *Cf.* the treaty of 1647 between Spain and the Hanse Towns, VI Du Mont, i, 403. By the agreement of Nov. 7, 1607 between Spain and the Hanse Towns, the Hanse merchants had received numerous privileges and apparently were privileged to carry any goods in their ships except goods from the Netherlands; the carriage of such goods, however, does not seem to have involved the confiscation of the ship. (De Abreu y Bertodano, *Coleccion de los Tratados de Paz, etc. de España* (1740), Part I, 383.)

[42] 17 *Rec. gén.* 194; Arts. 2 and 6 of the Declaration.

[43] This brief was written about 1649; whether the plea was successful is not known. Bib. Nat. Mss. fr. 18593, 323. See also, brief in the case of the *Sainct Sauveur* of Hamburg, *supra*, note 18.

[44] *Cf.* 3 Thurloe, *A Collection of State Papers*, 108, 109 and 6 *idem*, 523 (hereinafter cited "Thurloe").

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carrying Spanish goods led to constant protests, but to no immediate results.[45] The Lords States General of the Netherlands admitted that while "visitation and search tends to an inconveniency of trade, yet one can make no reasonable complaints on that account, nor demand that they would desist it as illegal."[46] They tried to persuade the Swedes to line up with them against English domination at sea on the ground that Swedish commerce was being ruined.[47]

The Dutch constantly sought support for the "free ships, free goods" rule which was of such benefit to their carrying trade. In 1655 Nieupoort, the Dutch Ambassador in England, was protesting against the seizure of several Dutch vessels and reported to the States General:

> . . . I represented to their honours, that even by this state here, in several treaties it was aimed at, and actually stipulated in some already, that a free ship should make free goods; that this was one of the best rules, not to demand from others more than what one was willing to be done to one's self; and that besides this it would be very unjust, that they would have it thus practised by others towards them, and they on the other hand would act otherwise against their highest neighbours and friends. . . .[48]

In the later negotiations for an Anglo-Dutch treaty, Nieupoort tried to secure consent to an article incorporating the desired rule, but was unsuccessful.[49]

The French, bidding for English favor, were ready to apply

[45] See 5 Thurloe, 24-5, 211, 243, 245 and *infra*, pp. 493, 495; 4 *idem*, 177. During the First Anglo-Dutch War of 1652-1654, Sweden seems to have suffered at the hands of both belligerents, and accordingly resorted to convoys to protect her "free ships, and goods". Declaration of the Queen of Sweden, Aug. 16, 1653, Robinson, *op. cit.*, 145.

[46] 2 Thurloe, 503, 504.

[47] *Ibid.*, 21. The Dutch Ambassador in Sweden to the Greffier Ruysch, Jan. 23, 1654. *Cf. ibid.*, 142, for a protest to Thurloe by the Swedish agent in England, March 4, 1653. For the Swedish treaties of 1654 and 1656, see *infra*, p. 498.

[48] 4 Thurloe, 17, 18. From Nieupoort, the Dutch ambassador in England, September 17, 1655.

[49] See 5 Thurloe, 5-6, Nieupoort to Ruysch, May 19, 1656 (N. S.).

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the "free ships, free goods" rule to English ships on a reciprocity basis.[50] Article XV of the treaty of 1655, the previous year, had negatived the application of the rule "enemy goods, enemy ship", but had not made applicable the rule "free ships, free goods".[51] The Dutch Ambassador in France reported that the French attitude in waiving the rule of the old ordinance was surely a discrimination against the Dutch, the relaxation in their favor secured in 1646 having expired in 1650. The Ambassador reported that not only the English, but also the Genoese, Venetians and Hanseatic merchants had received the benefit of the rule of the *Consolato* favoring neutral goods even on enemy ships.[52] This, of course, was different from the proposition made to the English.

Yet when the Dutch Ambassador endeavored to check this information in London, Secretary Thurloe told him it was all an invention of the Spanish to provoke trouble between England and the States General.[53] Thurloe seems to have told the truth, since Boreel, the Dutch Ambassador in France, wrote to the States General on April 22, 1657 (N. S.) that he had learned his previous information was false and that, in fact, Cromwell had interceded with the French King in behalf of the Dutch.[54]

However, in 1655 the French had conceded to the Hanseatic Towns the same suspension of the Marine Ordinance which they had recently accorded to the Netherlands. In this treaty the phrase "*la robbe de l'ennemie ne confisque point celle de*

[50] Count Brienne to Ambassador Bordeaux, Nov. 11, 1656, announcing a published ordinance to that effect; 5 Thurloe, 546. In the last period of hostilities, the English condemned French (enemy) goods in neutral ships; see the *Fortune* of Hamburg, 1656, Adm. Ct. Prize Sentences 6, No. 198, 2 Marsden, 30. The Prize Court declared that this was justified "as well by the lawe of nations as by due reprizalls lawfully granted."

[51] Cf. Jenkins, Opinion in the case of the *Ahasuerus, supra,* p. 487.

[52] 5 Thurloe, 653 and 682, and 6 *idem,* 290. The French discriminatory ordinance was dated Oct. 30, 1656 (N. S.).

[53] 5 *idem,* 697; Nieupoort to Ruysch, Dec. 20, 1656 (N. S.).

[54] 6 *idem,* 198. As indicating distrust of the Dutch adherence to their own rule, when they declared war on Portugal, see the note of the Agent of Hamburg on behalf of the Hanse towns, to the States General, Nov. 21, 1657, *ibid.,* 610.

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l'ami" appears. In thus abandoning, in favor of the Hanse merchants, the rule of "enemy ships, enemy goods" as well as according the benefits of the rule "free ships, free goods", the French went further than they had with the Dutch.[55]

But the Dutch and English continued to argue about the searching and seizure of the Dutch ships at sea. The Dutch urged the acceptance of passports or the certificate of convoying warships; the English insisted on retaining the right to visit and search.[56] On December 20, 1656, the Dutch Commander of the Admiralty instructed Admiral de Ruyter, who was convoying Dutch merchantmen, to prevent the lading of any Spanish or contraband goods on board Dutch vessels. Presumably the observance of this instruction would lend greater weight to the Dutch passports and certificates. Thereafter, if he met an English fleet he was to protest against any visit and search, civilly at first, and then, if necessary, by force, unless the English were clearly superior, in which case he was to be content with protests. His arguments, incidentally, were to be based on the subsisting treaty "and practice".[57]

When the second trade war broke out between the English and Dutch, Rules and Directions were issued on February 22, 1664, by His Majesty in Council for the guidance of the Admiralty in the adjudication of prizes. The first two articles are as harsh in their application to neutral commerce as were the early French ordinances. If a Dutch ship were taken with neutral goods on board, both were to be condemned. So also if a ship of a subject or ally carried Dutch goods, both were to be adjudged lawful prize.[58] Yet privateers were warned to

[55] VI Du Mont ii, 103. Manning doubts that the French would have granted greater privileges to the Hanse Towns than they gave the Dutch; see *supra*, note 39.

[56] See, *e. g.*, 5 Thurloe, 243, 258, 299, 535, 658, 687, 717.

[57] 5 *idem*, 696. *Cf.* protest of May 22/June 1, 1657 by the special Ambassador Nieupoort regarding the seizure of a Dutch ship laden with neutral goods, 6 *idem*, 302.

[58] British Record Office, P. C.–2/58. In interpreting these rules, it was held that the ship was to be deemed good prize if any part or share of it was enemies' property. Order of Nov. 24, 1665, Br. Rec. Off. P. C. Reg. 2/58, f. 290, also in 2 Marsden, 58.

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respect passports and other safeguards provided by treaties.[59] On the other hand, a further order of the Duke of York noted that the Dutch were using false papers to indicate a neutral destination when actually bound to an enemy port, and accordingly he instructed naval commanders if they met any ships of Dutch or Hamburg construction, sailed by any foreigners except Swedes, though they pretended to belong to friends and be bound to friend's ports, to bring them in. It was contemplated that this might result in bringing in friends' ships which would have to be restored, and it was therefore strictly ordered that there be no pillaging.[60]

The French protested vigorously against the English adoption of their old rule that "*la robe d'ennemy confisque celle d'amy*". The French Ambassador, early in 1665, stated that this law

> is no longer practised in France, and that the King, my master, hath dispensed with it towards all such nations as he hath traded with; and further that it was never put in execution against the English. And so the law of retaliation, drawn by head and shoulders never so much, cannot be applied to it; for ever since the year 1650, and indeed ever since 1645, I take it, the King, my master, abolished that law as to the Dutch and the Hanze towns; it being, as he thought, cruel, unjust, odious, and unjustifiable.[61]

The Prize Commissioners were asked to report to the King on the matter. They asserted that the rule condemning all goods on an enemy ship was the ancient law of England, Spain and Portugal, "and even word for word of France". They denied that the old French ordinance had ever been repealed, though mitigated as to certain states by special treaties. They charged it had recently been applied against the English. They referred to the French offer to prohibit the mingling of Dutch with French goods on French ships, but doubted the efficacy of this without a treaty. Their conclusion is interesting.

[59] Instructions to privateers, Feb. 11, 1664 and Nov. 9, 1667. Br. Rec. Off. State Papers 104/174 B.

[60] Br. Rec. Off. Ad. 2/1725.

[61] Harl. Mss. 1509, f. 87b., 2 Marsden, 62, 63.

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> . . . neither can your Majestie ever hope to obteine your ends by warre upon the Hollanders, if, while you at vast expence kepe shipps at sea to intercept their trade, they in the meane time drive it securely under counterfeit shipps and papers, to elude the search and enquiry after them.[62]

With reference to the harshness of this English Declaration of 1664, Jenkins' later comment is interesting. The Declaration made a neutral ship forfeit if it carried enemy persons. At this time, the Netherlands, Denmark, Brandenburg, Luneburg, France and England were all belligerents. Jenkins comments on the scarcity of neutral bottoms and seamen and the resulting high freight rates. Neutral ship-owners dared not employ Dutch mariners for fear of forfeiting their vessels; more Dutch sailors, therefore, Jenkins thought, served in the Dutch navy. If His (English) Majesty would permit neutral ships to carry a few enemy mariners, the Dutch would be drawn into this more lucrative and less dangerous employment, thus injuring the Dutch navy and aiding the neutral carriers who were of great value to the English.[63]

In the English directions for privateers issued in 1672, the rule of "enemy ships, enemy goods" was retained, but enemy goods no longer carried the forfeit of a friend's ship,[64] though the goods themselves were forfeit.[65]

The Spanish, on April 8, 1656 (N. S.) also had announced the rule of "enemy goods, enemy ships", banning all trade in English products under penalty of the condemnation of the neutral carrier.[66]

The Anglo-Portuguese treaty of 1654 is very explicit. Article XXIII proclaims the rule of "enemy ships, enemy

[62] Harl. Mss. 1509, f. 125, 2 Marsden, 63-64.

[63] Jenkins to the King and the Lords of the Privy Council (undated, but about 1665 or 1666), 2 Wynne, 740.

[64] Pratt, *Law of Contraband of War* (1856), 252; Rules of H. Ct. of Adm. 1664 rule the same. 2 Marsden, 411.

[65] Lauderdale to the Scottish judges, June 30, 1673, S. P. Scotland, Warrant Book 2, f. 229, 2 Marsden, 84.

[66] 4 Thurloe, 658. *Cf.* also Extract out of the Register of the Resolutions of the Lords States-General, March 29, 1657 (N. S.), 6 Thurloe, 126.

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goods" as well as "free ships, free goods".[67] This was probably more to the advantage of England than of Portugal since the former was becoming a large carrier of foreign goods, a situation very different from that existing a century before.

The Anglo-Swedish treaties of 1654 and 1656 contained elaborate provisions for passports and certificates which relieved the ship and cargoes from further examination. The purpose was said to be to avoid having the goods of enemies carried "under the disguise of friendship".[68]

In 1659 France and Spain concluded the Peace of the Pyrenees. By Articles XIX and XX of that treaty, the rules of "enemy ships, enemy goods" and "free ships, free goods", were both laid down.[69] The benefits of these rules were extended to the Dutch by a declaration of the French King in 1661.[70] This was confirmed by the treaty of 1662 between these two states.[71] In the next year, France made the same agreement with Denmark.[72] With Sweden in 1666, England signed a treaty under which ships of the two countries were free from visit and search when provided with passports, issued after the competent authorities had assured themselves, by actual examination of the cargo, that the ships were not carrying enemy goods or contraband.[73] This is not an uncommon provision, which indicates that free ships did not make free goods, since if that rule were accepted, there would be no need for the passport's assurance that no enemy goods were on board. On the other hand, the acceptance of the passport gave the neutral carrier some assurance that his vessel would not be searched for enemy goods.

The Dutch treaty with Sweden in the following year con-

[67] VI Du Mont ii, 82, 84. Manning, *op. cit.*, p. 317 says this was the first treaty in which England "agreed that the flag should cover the cargo."

[68] 1654, VI Du Mont ii 80; 1656, *ibid.*, ii, 125.

[69] *Ibid.*, ii, 264.

[70] *Ibid.*, ii, 346.

[71] *Ibid.*, ii, 412.

[72] *Ibid.*, ii, 436, 439; reaffirmed by Art. XXI of the treaty of 1663, *ibid.*, 470, 472.

[73] *Ibid.*, iii, 83.

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tained the rules "free ships, free goods", and "enemy ships, enemy goods".[74]

In 1667 also, the English and Dutch came to an agreement on this subject, incorporating rules laid down in the Dutch-French treaty of 1662, namely "free ships, free goods" and "enemy ships, enemy goods".[75] In the same year England concluded a treaty with Spain which expressly affirms the rule of "enemy ships, enemy goods" and implies that free ships make free goods.[76]

The treaty situation in 1668 may be summarized by saying that the rules "free ships, free goods" and "enemy ships, enemy goods" were established between the principal maritime states of Europe. France was bound to these rules by treaties with Spain, the Netherlands, Denmark and the Hanse Towns; England, with Spain, the Netherlands and Portugal; the Netherlands, with England, France and Sweden. Between the Netherlands and Spain, the rule "free ships, free goods" held, but not the rule "enemy ships, enemy goods". The English treaties with Sweden and Denmark imply that unfree goods make the ship unfree. Between England and France, no general treaty rule was in force.[77] It is therefore apparent that the Dutch shipowners at this time had secured by treaties the freedom of their carrying trade but that neutrals dependent on foreign bottoms could not safely ship in any but neutral bottoms. The status of these rules in the absence of an applicable treaty was still highy controversial.

Of course these rules were far from static and the political variations of the years brought about new arrangements.

On February 6, 1667 Sir Leoline Jenkins gave an opinion on the inquiry whether in the recent war with the Dutch any free ship had been condemned for carrying enemy goods. He states that he did not rely on his own memory alone, but asked Sir Robert Wiseman, the Advocate-General; Sir William

[74] VII *idem*, i, 37. This treaty also contained provisions for passports.

[75] *Ibid.*, i, 44. In the treaty of 1668 between England and the Netherlands, *ibid.*, i, 66, these provisions were substantially reiterated.

[76] *Ibid.*, i, 27, Arts. XXV and XXVI.

[77] *Cf. supra*, pp. 493-494.

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Turner, the Lord High Admiral's Advocate; and Mr. Alexander Cheek, His Majesty's Proctor. All agreed that no such prize judgment had ever been handed down and Jenkins modestly adds:

> And if my Opinion be (as it seems to be) required, I do not (with Submission to better Judgment) know anything, either in the Statutes of this Realm, or in his Majesty's Declarations upon Occasion of the late War, nor yet in the Laws and Customs of the Sea, that can (supposing the property of the said Proceed to be *bona fide* vested in the ship's Owners, his Majesty's Allies) give sufficient Grounds for a Condemnation in this Case: And the said Advocates (upon the Debate I had with them) did declare themselves positively of the same Opinion.[78]

One must assume from this categorical statement, that the English Royal Decree of February 22, 1664, whereby free ships were to be condemned if carrying unfree goods, was never applied, although Jenkins excludes its very existence. On another occasion, Jenkins asserted that this rule was not applied to French ships, either before or after the decree,[79] and special consideration was shown the Spanish, Portuguese and Swedish.[80]

Jenkins applied this principle in his opinion of November 10, 1668 to the Right Honorable the Lords of the Committee for Grievances on the case of the British vessel *Ahasuerus*, which was captured by a French privateer and condemned with its cargo as good prize by the French Coun-

[78] 2 Wynne, 741. This opinion may have been evoked by the Swedish protest and claim for damages, Aug. 17, 1666; Br. Rec. Off. P. C. 2/59. See a similar protest, June 30, 1672, H. C. A. Misc. 410. But the Swedes paid tribute to Jenkins' fairness and justice; see letters from Swedish Resident to Jenkins, Jan. 22, 1665, H. C. A. Misc. 409. It may be noted that "Commercial relations with Sweden . . . were always of the first importance. . . . Its value lay in the nature of the commodities imported: iron and copper, pine-timber, pitch and tar, hemp and flax; materials for ship-building. . . ." *British Diplomatic Instructions, 1689-1789*, vol. I, *Sweden* (*1689-1727*) (Ed. for the Royal Historical Society by James F. Chance, London, 1922), Introd., ix-x.

[79] 2 Wynne, 718-21; case of the *Ahasuerus, infra.*

[80] Commissioners to Jenkins, June 20, 1666, Br. Rec. Office, H. C. A. Misc. 410.

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cil Royal. The cargo of butter, sugar, cloth and serges was not claimed by any English merchant and was accordingly presumed by the French Council to belong to enemy Spanish merchants of Flanders. The ship had no passport or sea-brief as required by the Anglo-French treaty. In his opinion, Jenkins considered the propriety of the French judgment under French law. Referring to the Treaty of the Pyrenees of 1659 between France and Spain, Jenkins said that it

> . . . doth nowhere determine, that unfree Goods do make the Ship unfree, in Case it have not a Passport in due Form on Board it; the utmost Peril is, that where such Passport is not produced, the Ship is subjected to a Detension, and a rigorous Excussion; but the owners, if free, are not by the Treaty, nor can they by Law be debarr'd to make out their Property by legal Proofs. This I say, *MY LORDS*, where there is no Declaration made by Reason of a War, that unfree Goods shall make the Ship unfree, as his Majesty publish'd in *February* 1664, to that Effect against the *Dutch*. The Treaty with the States mentions not this Case; therefore it must be resolved according to the *Jus Commune*, which allows not the confiscating of a Friend's Ship, because it carries Enemies Goods. 'Tis True, that an unfree Ship makes the Goods of a Friend unfree, but besides that, it is obvious there is not a Parity of Reason in both Cases, penal Constitutions cannot be extended beyond the Letter, to the Prejudice of publick Commerce. Nay, 'tis expressly provided in all the Treaties abovementioned, that where contraband Goods are met with going to an Enemy in Friend's Ship, the contraband Goods only shall be taken out and confiscate, but the Ship shall be Free, . . . so that tho' it be very inconvenient, not to have a Passport in Form, yet it is not so fatal as the Argument for the Captors would have it to be . . . [81]

Even at this date, English prize courts proceeded on the basis of presumptions when actual proof was lacking and there were suspicious circumstances. An examination of a few cases may be of value. The cases of *The Emperor Constantine* and *The Ascension* are illustrative. These were neutral ships

[81] 2 Wynne, 718, 719. Jenkins concluded with his discussion of the French Marine Ordinance of 1584, which is referred to *supra*, p. 487.

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of Venice and Genoa and apparently Italian-owned, laden with sundry goods claimed to be neutral property, some of them having been laden at Cadiz, Spain. The ships were bound to Ostend, a free port, and were captured while the English were at war with the Dutch and the Spanish. Jenkins first reported to the Lords Commissioners in Prize on September 12, 1665 that "it may be very reasonably presumed that the vessels were not without foreign goods."[82] Jenkins said it was "sufficiently known upon whose account there is so much trading of late to Ostend" and here was a master "whose course of trade lay all his lifetime in the Levant" and who "would not have come into our Seas without extraordinary high freight, and such, Flandrians had not reason to give him, but the Hollanders had, in regard they cannot safely trade to these parts (at least-wise) in their own bottoms". It was further noted that other ships sailing in the same convoy were avowedly going to Amsterdam. Letters found on board the *Ascension* also indicated a contact with Holland.

The cases were discussed in the Council and referred to the Judges of the Admiralty on October 6, 1665. The Judges disagreed and the cases came again before the Council on October 20, 1665. The judges were asked to report their views "severally and distinctly".[83]

Dr. Exton advised, "these ships being free ships trading from free port to free port with free goods and likewise to and for the account of free persons by the proofs *in preparatorio* as either by the Bills of Lading or allegations appears, against which proofs nothing is either judicially alleged or proved", ought to be released.[84]

Jenkins disagreed. He admitted the ships were free but suspected the cargo. They were "taken in company with others already condemned, five whereof (very considerably

[82] Br. Rec. Off. State Papers Misc. 9. England had no treaty with the Italian states guaranteeing freedom for their ships carrying enemy goods, and apparently Jenkins would condemn both if the enemy character of the cargo were proved.

[83] *Ibid.*, P. C. 2/58.

[84] *Ibid.*, H. C. A. Misc. 483.

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laden) were bound for Ostend (a port not used before this war to receive such consignations)". His suspicions were aroused not only by the letters aboard, which seemed to have been written by Hollanders, but also by the absence of advices of the merchants attached to the bills of lading, since "'tis the usual course of merchants at the distance to send a duplicate by sea of those advices that pass overland with their correspondents." He notes also that the masters profess ignorance of the nationality of one of the laders, though "'tis utterly improbable that any skipper trading in Cadiz be unacquainted with the purport of your M's declaration of 22 Feb., whereby the goods of unfree persons are made to infect the ship." He concludes with a statement which would have well pleased Sir Samuel Evans in 1915:

> . . . Yet I must confess that all this which I have offered amounts to no more than matter of presumption against the ships. Here are no proofs of the case but I must crave leave to observe unto your M. two things which I humbly conceive to be undeniable. The one, in point of law, that where proofs are difficult, such presumptions as are just and weighty shall so effect the party presumed against as to be reputed proofs against him until he do take them off, and evince the contrary by legal and concluding proofs. The other is in point of fact, that where colouring is 'tis impossible that there should be anything but presumption on your M's behalf, for 'tis certain the Dutch do still carry on a main trade under those disguises so 'tis not to be expected that they should lay their causes with such colour that shall at first view betray their designs, and as on the one side 'tis a high disservice to your M. and to the justice and reputation of your arms that such negociants who are free and innocent should be worried with groundless vexations and delays, so on the other side it seems most just and suitable to your M. and to your M's undoubted right of dominion and protection in your M's Seas that those who pass them towards a port so justly suspected as Ostend is should give a satisfactory account (which they are in bona fide are seldom unprovided to give) that they do not carry on the trade of those who are in hostility against your M.[85]

[85] *Loc. cit.* *Cf.* Jenkins' statement in the case of *The Inclination of Rochell,*

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The cases were then referred to the Commissioners for Appeals,[86] whose report does not seem to be available. However, a "Calender of such Shipps as have been restored from December 1664 to February 1667"[87] indicates that the goods (and ships) were released after giving further proof.[88]

In the case of *The Little Dorothy*,[89] Jenkins gave an opinion on May 13, 1665. The vessel was Dutch built and owned, but was apparently carrying timber from Norway to London and an English merchant claimed he had bought the goods. The papers were defective but it was explained that they feared capture if they met a Dutch vessel. Jenkins advised that there was no ground for condemnation if the English merchant could prove he bought the goods and "was not in collution [*sic*] with the Dutch." It is not clear what happened to the ship, but the case indicates that the rule "enemy ship, enemy goods" was relaxed in favor of goods bound to an English merchant in England.[90]

Where there was doubt as to the ship's destination, it might be released on bond not to discharge at any except a specified port to be proved by certificates, in which would be included a sworn statement of the consignees and their factors that they were not acting for a Hollander.[91]

June 14, 1655: "the French do take it much amiss that I do require further proofs than there ship's papers to make out the property. For My Lords, I heed not any ships papers since this voyage is from one French Port to another." *Ibid.*, State Papers 9/240.

[86] *Ibid.*, P. C. 2/58.

[87] *Ibid.*, Ref. Index 9027.

[88] See also the *Saint Ann*, Nov. 9, 1665, and the *Vread* of Ostend, April 29, 1666; State Papers 9/240.

[89] *Ibid.*, State Papers 9/240; 2 Wynne 724-5.

[90] But see a contrary intimation in a report by Jenkins, *circum* 1667, Br. Rec. Off. State Papers 9/240.

[91] Case of the *King of Saint Valerie*, July 15, 1665. For the practice of the Hamburgers in lending their names to color goods, see the *St. George* of Hamburg, Sept. 17, 1666. See also, particularly, the *St. Jacob* of Hamburg, April 26, 1667, which suggests a rudimentary idea of the modern "Black List". Jenkins applied presumptions in favor of releasing the vessels as well; *cf.* the *Fortune* of Stralsbound, May 24, 1666 and the *Saint Elizabeth*, Jan. 7, 1666. All these cases are in Br. Rec. Off. State Papers 9/240.

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The advantages of treaties, especially as they contain provisions for passports and like documents, are well shown by the French ordinance of December 19, 1673.[92] This ordinance recites that French sea captains are in doubt as to what foreign ships may be seized at sea. They are instructed that English, Swedish and Danish vessels which have *lettres de mer* and other papers in the form prescribed by the treaties with those states, are to be free and without any hindrance, even if they carry enemy goods.[93] As for the vessels of all other neutrals, they are to be equally free if they have no enemy goods or persons on board. But even ships carrying enemy goods shall be free if they have passports and pay a tax of thirty sous per ton. The reason for this ordinance is obvious when one recalls that it was in 1672 that Louis XIV began his second war of conquest against the Netherlands. In 1673, England and Sweden were supporting France, though England dropped out in 1674. Brandenburg, the Emperor and Spain sided with the Netherlands. In August, 1681, in the midst of one of the rare intervals of general European peace during this century,[94] Louis published a new ordinance which returned to the old rigorous French rule. All ships, even of friends, were declared good prize if they carried enemy goods, and all goods of friends were good prize if carried on enemy ships. In other words, "enemy ships, enemy goods" and "enemy goods, enemy ships".[95]

[92] 1 Chardon, *Code des prises*, 54-55.

[93] The treaty of 1672 with Sweden had provided in Art. XXVI that the passport should certify that the ship was "chargé des marchandises de Suède" and "qu'aucun Etranger n'a part dans ledit Vaisseau pour les Marchandises qui y sont déjà, ni pour celles qui y seront mises." VII Du Mont i, 166, 169.

[94] Clark, *op. cit.*, 98.

[95] 19 *Rec. gén.*, 282, 334, Liv. III, Tit. IX, Art. 7 of the Ordonnance. The text of the Article is as follows:

"Tous navires qui se trouveront chargés d'effets appartenant à nos ennemis, et les marchandises de nos sujets ou alliés qui se trouveront dans un navire ennemi, seront pareillement de bonne prise."

For a contemporary French official interpretation of this article, see "Memoire sur la question de savoir si les Marchandises ennemie trouvée dans un vaisseau allié confisque la marchandise"; Archives Nationales Mss. G. 5. 214, 2ème *petit dos. circa* 1685.

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When the Dutch declared war on France in 1688, they announced that they would seize only contraband goods bound for France.[96] But in the next year, when Great Britain became Holland's ally, the two states signed a treaty whereby they both agreed to seize as good prize all ships, of whatever country, bound for France. They justified this measure on the ground that so many states were at war with France. This was the beginning of the Grand Alliance in which England and the Netherlands joined with the League of Augsburg, which included the Emperor, the Kings of Sweden and Spain, the Electors of Bavaria, Saxony and the Palatinate, against Louis XIV of France. In the same year an English Order in Council announced a ban against any ship from Hamburg or other towns of the Empire trading with France.[97] Hedges, in a letter to Nottingham, Secretary of State, thought the Hamburgers were not enemies, that the Emperor was an ally, and suggested reconsideration of a measure which was not justified by war, treaty or the law of nations.[98]

The English Order in Council and the subsequent Anglo-Dutch treaty amounted to an absolute ban on neutral commerce with France. That the few neutral countries which remained outside the Grand Alliance were not highly pleased with this interference with their commerce, becomes evident from the diplomatic instructions sent to the British ministers

[96] VII Du Mont ii, 213.

[97] Adm. Sec. in Letters 5249, f. 48; 2 Marsden, 130.

[98] A further passage in his letter might well have inspired his great successor, Lord Stowell:

"In the next place, the court of Admiralty is a court of justice, and the judge sworn to administer it to the best of his judgment, and is as much obliged to observe the laws of nations, with respect to the municipal laws of the realm as the judges of the courts at Westminster are bound to proceed according to statutes and the common law; and if the method prescribed for condemnation be not consonant to the laws of nations, as there is reason to doubt, they being the goods of subjects of allyes, I humbly beg your Lordship will be pleased to consider the difficulty that I shall subject myself unto by such proceeding, and, which is worse, that I should be wanting in my duty to the King in not laying before his Majesty what, in my judgment, is the most justifyable and honourable way of executing his Majesty's command." S. P. Dom. Naval 1, 2 Marsden, 131, 132. The letter is dated Oct 22, 1689.

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accredited to neutral courts. It seems that considerable pressure was used in order to make these countries acquiesce in the measures adopted by the belligerents.[99]

It is not surprising that in view of these efforts to cut off France from all outside help, the French rigorously applied the rule "enemy ships, enemy goods" and "enemy goods, enemy ships" as laid down in the Ordonnance of 1681.[100] The only exception to this rule was that French goods on enemy ships were freed.[101] To counteract the interception of neutral commerce to France, Louis XIV permitted the French merchants of Dunkirk and Calais to use the Spanish flag and to alter documents to avoid capture by the enemy.[102] At the same time, the French were active in their diplomacy and made every effort to prevail upon neutrals to assert their rights against the prohibitions imposed upon them by the enemies of France.[103]

[99] See the letters of Earl of Nottingham, Secretary of State to William Duncombe, British Minister to Sweden, dated December 31, 1689, and January 17, 1689/90, *British Diplomatic Instructions, 1689-1789,* vol. I, *Sweden (1689-1727)* (London, 1922), 6-7, 8. It is interesting to note the argument that commodities which Sweden imported from France (wine and salt) were such as could be had from Spain and that it therefore was not important to justify resistance against the trade prohibition. Another interesting point is the fact that the English apparently permitted a limited number of Swedish ships to carry salt from France, in spite of the general prohibition. This seems to have been a concession for assuaging neutral irritation. It may be noted that Sweden was a nominal ally of the League, but actually scarcely a participant in the war. See Hallendorf and Schuck, *History of Sweden* (1929), 289, and Bratt, *Sverges Yttre Politik Under De Preliminärā Förhändlingarna Före Freden I Ryswijk* (1905), 1-19.

[100] See *Registre des dépêches et des ordres du Roy consernant les Prises; Trois Derniers Mois 1688 & Année 1689,* page 21 of third enumeration; *Fonds de la Marine, MSS. F² 7, Archives Nationales.*

[101] *Ibid.,* 25-26, cases of the *White Elephant* and *La Dame Catherine.*

[102] *Ibid.,* 35*verso*-36 and 46.

[103] See the instructions for the Abbé d'Estrées, French ambassador to Portugal, dated April 27, 1692, *Recueil des instructions diplomatiques,* vol. 3 (Portugal), 196, 203-4:

"Ainsi le sieur abbé d'Estrées se contentera seulement de tâcher de découvrir si les dispositions des Portugais sur les affaires présentes sont toujours les mêmes, et principalement, s'ils ne songent point à prendre de parti plus ferme pour assurer la liberté du commerce de leurs vaisseaux, que les démarches qu'ils ont faites jusqu'à présent, et comme Sa Majesté s'est déjà expliquée tant

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Thus, at the threshold of the eighteenth century the disproportionate assertion of belligerent rights was again in vogue in spite of all the efforts made during the seventeenth century to assure more freedom to the seaborne commerce of neutral nations. The rule of "free ships, free goods" found its way into many treaties from the middle of the century on, and in the 1660's and 1670's the rule governed the relations between the most important maritime powers. It is evident, however, that at the close of the century the rule had not taken firm root as a general principle of the law of nations and it was not strong enough to stand the test of the economic and political struggle which the Grand Alliance waged against Louis XIV. A considerable period of time had to elapse before the neutral nations felt that the rule of "free ships, free goods" was well enough established to assure its respect, and to justify its support even by force, if necessary.

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à l'envoyé de Portugal qui est auprès d'elle que par le sieur d'Esneval à Lisbonne, que tous les vaisseaux Portugais pris par ses armateurs sortant ou entrant dans les ports de ses ennemis, seroient déclarés de bonne prise ainsi que les Anglois et les Hollandois arrêtent ceux qu'ils rencontrent allant vers le ports de France ou en sortant, le sieur abbé d'Estrées parlera dans le même sens, les Portugais convenant eux-mêmes qu'il ne seroit pas juste que les ennemis de Sa Majesté pussent se servir librement de la bannière de Portugal, pendant qu'elle ne pourroit être d'aucune utilité aux sujets de Sa Majesté; il fera voir en même temps, comme de lui-même, à ceux avec qu'il en parlera, l'avantage que les Portugais auroient trouvé à faire le commerce dans un temps où les Anglois et les Hollandois ne le peuvent faire; la jalousie que ces deux nations en ont eue qui les oblige à le troubler en arrêtant les vaisseaux de Portugal; le profit que les sujets des deux couronnes du Nord retirent de la fermeté que les Rois leurs maîtres ont témoignée pour l'assurer et enfin la facilité que le Roi Don Pedro auroit eu de les imiter, en faisant dans ses ports les représailles qu'il lui seroit aisé de faire sur les Anglois et les Hollandois qui, ne pouvant se passer du commerce de Portugal, accorderoient tout ce que cette couronne leur demanderoit, s'ils voyoient qu'elle prît la résolution de le leur interdire."

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NEW LIGHT ON THE PARIS PEACE CONFERENCE *

The Organization of the Conference

Council and Conference

IN November 1918 peace negotiations were devoted to clarifying the principles of the settlement, and in December to determining conference membership and order of business. In the middle of January the problem of organization tended to absorb those issues which had previously appeared in isolation as questions of principle, membership and agenda. The representation of the lesser Allies had been admitted in December, but it remained to determine how far the Conference organization would permit them to exercise effective influence on the settlement. Agenda topics had previously presented themselves in the abstract as items on a list but now they came up concretely as proposals to create and instruct commissions and committees. The old issue of precedence between the "settlement of the war" and the "organization of the régime of peace" took on a new form when, in the flux of relationships, two opposed jurisdictions came to define themselves, a Council which regarded itself as Supreme and a Conference which referred to itself as Plenary. In the contest for power, which received no formal adjudication, and in the distribution of functions, which appears to have occurred without plan, it came about that the Council made good its supremacy in the settlement of the war, while the Conference exercised its plenary authority in the organization of the peace.

In the fall of 1917 the Supreme War Council had been created by France, Britain, Italy and the United States, as their paramount political organ. When it assumed the conduct of the Armistice negotiations, representatives of Belgium, Greece, Serbia, and possibly Japan were invited to attend its sessions. The heir of this Council was the Council of Ten, with its descendants, the Council of Five and the Council of

* The first part of this article was published in the POLITICAL SCIENCE QUARTERLY for September 1931, pp. 335-361.—ED.

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Four. The French plans of November had assumed that this body would make the preliminary peace as it had made the Armistice, coöpting into its sessions the delegates of the smaller Allies when questions especially concerning them were under consideration. David Hunter Miller had criticized this plan in a mild way, proposing that

> instead of a preliminary discussion among only four Great Powers with other powers admitted when and as the case might require, there would be a discussion of each particular question among all the powers directly interested, which would always include the Great Powers.[1]

This issue was left in abeyance while it was decided that the small powers would attend the Conference, and while the number of delegates to be allotted them was canvassed. In January the two opposed conceptions of the rôle of the small powers, and hence of the very nature of the Conference organization, came into conflict.

Wilson had undoubtedly pictured himself as able to "lead the weaker powers" against the French and British.[2] This no doubt led him to look with suspicion upon that clause of the Tardieu draft of January 8th which provided that whereas the representatives of the five Great Powers should "take part in all sittings and Commissions", those of the other powers should "take part in the sittings at which questions concerning them are discussed."[3] The discussion of this clause raised the question whether the authority of the Peace Conference was to be vested in a continuation of the Supreme War Council which would give informal hearings to the representatives of lesser states, or in a new organization, in which the great states

[1] Miller's draft cablegram of November 25, in *Miller Diary*, vol. II, Document No. 10, p. 53.

[2] Wilson to House, about November 15, *House Papers*, vol. IV, p. 213; also his plan of April 6 to threaten the Council of Four that if they did not keep to the Fourteen Points he would appeal to Plenary Sessions. *Ibid.*, pp. 401-2.

[3] *Miller Diary*, vol. III, Document No. 170, p. 274. (It is not certain that this is the exact language of the Tardieu draft; the minutes of the Council do not indicate any amendment, although they record a warm discussion, as is noted below.)

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would set themselves up as an informal steering committee. The meaning of the sharp passage of arms between Wilson and Clemenceau on January 12th is obscured by an imperfection in the minutes, but the general course of the argument can still be followed.

The Supreme War Council had just finished discussing the Armistice renewal terms, dismissed the military experts, and picked up the Tardieu draft. Wilson asked Pichon " whether this subject was not for the more general conference." Pichon replied correctly that it was first necessary to set up the more general conference. In that moment the actual organizing of the conference began. There took place an inconclusive discussion of the representation of Montenegro and Russia. Then the trouble started.

> M. Pichon stated that they would then have to consider the representation of the Great Powers. It was understood that the enemy powers should not be represented until the Allied Powers had reached an [*end of page 14 of mimeographed set of minutes in the Hoover War Library. Page 15 then begins with a parenthesis, as follows*] (A remark by the President). Mr. Lloyd George stated that at the Supreme War Council the smaller nations were only consulted when their intentions were involved. The President said he did not like the appearance of [*not?*] consulting nations that we are protecting unless they were interested. Mr. Lansing remarked that if they followed that procedure they would be imitating the Council of Vienna. The President was in favor of holding informal conversations among the Great Powers, but believed that they must have an organization of all the nations, otherwise they would run the risk of having a small number of nations regulate the affairs of the world, and the other nations might not be satisfied.
>
> Mr. Balfour proposed that they have private talks to reach formal conclusions, and then put these conclusions before the smaller nations for their examination and admit them to the conference to hear their observations.
>
> M. Clemenceau then spoke at some length . . . [4]

[4] Minutes of the Council of Ten, B. C. A-1, January 12, 1919, in the Hoover War Library. Clemenceau's speech is printed in Baker, *Woodrow Wilson and the World Settlement*, vol. I, pp. 179-180.

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In the course of his long speech Clemenceau protested that Honduras and Cuba could not be allowed the right to give an opinion on all questions of the world settlement, and that "the five great powers should reach their decision upon important questions before entering the halls of the Congress to negotiate peace." He demanded that "meetings be held in which the representatives of the five countries mentioned shall participate, to reach decisions upon the important questions, and that the study of secondary questions be turned over to the commissions and the committees before the reunion of the Conference."

Since there are defects and uncertainties both in the available text of the Tardieu draft and in the minutes of the debate, the issue between the two champions is not as clearly defined as it should be. It seems certain, however, that Baker is wrong when he asserts that Clemenceau was unwilling "even to consider consultation with the smaller nations." [5] The only practical problem at stake was the formal relation of Council to Conference and the representation of the lesser powers on the commissions.

The questions debated with such heat on January 12th were left undecided by the statesmen, but events made the decision. The body which Wilson called "informal", which Balfour legitimized as "private" and which Clemenceau wished to make sovereign, met thereafter regularly. By coöpting two Japanese delegates it became, in the language of the newspaper men, the Council of Ten.

When the Plenary Conference met on January 18th it appointed the five great Powers as its Bureau. The Americans thenceforth designated the Council of Ten as the "Bureau of the Conference", heading their copies of the minutes with the letters "B. C." as if the Council were the creation of the Conference with its authority derived at second hand. But the Conference Secretariat took a different view. In the official schedule of membership and organization [6] it asserted that the

[5] Baker, *op. cit.*, vol. I, p. 179.

[6] *Conférence des préliminaires de la paix. Composition et fonctionnement.* In Hoover War Library; reprinted in *Miller Diary*, vol. I, pp. 378-499, and in

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Bureau of the Conference was one thing and the "Supreme Council of the Allies" another. The British did not seem to commit themselves, but listed all meetings of all Councils and Conferences under the letters "I. C." (Interallied Conference.)

The distinction between the authority of the Conference and that of the Council was also important in connection with the work of the five commissions, on League of Nations, War Responsibility, Reparations, Labor Legislation and International Transit, set up by the Plenary Conference on January 25th. Although the resolutions creating these commissions had been adopted in the Council of Ten on January 21st and 23d, and the action of the Conference did not come till January 25th, these commissions were regarded by the Secretariat as creations of the latter date. The American members of these commissions several times made use of the fact that the parent body was the Conference rather than the Council. On February 13th Wilson told the Council that he wished to present the report of the League of Nations Commission to a plenary session of the Conference without even showing it to the smaller group of the Great Powers. When Clemenceau objected, Wilson replied:

> That the League of Nations Commission was not a Commission of the Conference of the Great Powers but of the Plenary Conference. Consequently the first report ought, as a matter of fact, to go to the Plenary Conference.[7]

Lansing used a similar argument in the Commission on Responsibilities in order to block a resolution calling upon the Supreme War Council to insert in the terms of renewal of the Armistice a clause calling for the arrest of suspects and the seizure of documents. Lansing declared that "the present Commission was not appointed by the Supreme War Council but by the Peace Conference; it is therefore before the Peace Conference that the resolution must be presented."[8] The

Documentation internationale, Paix de Versailles, vol. I, pp. 199-311. The minutes of the Council of Ten will hereinafter be cited as "B. C."

[7] B. C. 31, February 13, 1919, in *Miller Diary,* vol. XIV, p. 418.

[8] *Documentation internationale. Paix de Versailles,* vol. III, p. 28. (Minutes of the 2d session of the Commission, February 7.)

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Commissions on League of Nations and International Labor Legislature made their reports punctiliously to the Plenary Conference, taking care that the most trivial amendments were duly laid before the parent body and adopted. Each of these commissions appeared twice before the plenum. The Commission on Responsibilities saw its report adopted in the sixth plenary session on May 6th.[9]

Two of the Conference commissions failed to report back to the parent body. The Commission on Ports, Waterways and Railways began like the commissions on Labor and League of Nations to prepare general international conventions for adoption at plenary sessions, but this activity was suspended early in March to make way for the hurried drafting of treaty clauses with Germany.[10] The Commission on Reparations, assigned to report on a subject which was strictly a question of war settlement rather than permanent international organization, proved unable to carry out its task. Thus these commissions, insofar as they came to concern themselves with the treatment of the vanquished by the victors, lost their close connection with the jurisdiction of Plenary Conference and tended to assimilate their rôle to that of the committees appointed by the Council.

The Conference, for its part, had very little to do with the treaty terms. It heard a brief oral résumé of them at its plenary session of May 6th, the day before the text was handed to the Germans. The agenda carefully described this presentation, not as a report to the Conference, but as a "declaration relative to the terms of peace".[11] When Tardieu had finished the declaration, Clemenceau as Chairman made the situation brutally clear by saying:

> Gentlemen, this is merely a simple communication to begin

[9] Minutes of the 6th Plenary Session, May 6, 1919, in *Miller Diary*, vol. XX, p. 149.

[10] Minutes of this commission in *Miller Diary*, vols. XI and XII; a different text, covering nearly half the sessions, in *Documentation internationale. Paix de Versailles*, vol. VI.

[11] Minutes of the 6th Plenary Session, May 6, 1919, in *Miller Diary*, vol. XX, pp. 149-181.

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with. Nevertheless, it is my duty to ask whether there are explanations.

The same procedure was attempted in the case of the Austrian Treaty on May 29th,[12] but the small powers revolted and insisted on a fuller hearing on May 31st. Thus only two sections of the Treaty, the Covenant and the Labor Section, were ever adopted by the Paris Peace Conference. The other sections, including the territorial clauses, were presented to the enemy, not only without receiving the formal approbation of the Conference, but even without giving any of the lesser Allies (except Belgium) more than a day's notice of the frontiers that were being submitted to the enemy on their behalf.[13]

Thus the original French plan for peace terms dictated by the Great Powers and a new international order established by a general conference was substantially realized except for the circumstance that the two conferences were simultaneous rather than consecutive.

The Great and Small Powers.

The Plenary Conference was not only the agency used to legislate upon the future international order, but also the forum in which the smaller states sought to turn to account their theoretical equality with the Great Powers. There were twenty-two of these "Powers with Special Interests". Together they held thirty-six seats to the Great Powers' twenty-four. The personnel of their staffs totaled about five hundred, only one hundred less than the number accredited to the Conference organization[14] by the Great Powers. In the week of idleness between January 18th when the Conference was or-

[12] Minutes of the 7th Plenary Session, May 29, *ibid.*, pp. 188-189; the minutes of the 8th session, May 31, are accessible in the Hoover War Library.

[13] Note Pichon's statement in Council of Five, F. M., 24, June 12, 1919, *ibid.*, vol. XVI, p. 386.

[14] The size of the various delegations including experts, etc.:

British Empire	184	Serbia	104	China	62
France	136	Belgium	71	Czechoslovakia	46
Italy	120	Japan	64	Rumania	37
United States	108	Poland	64	Greece	32

These states sent 90% of the Conference personnel.

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ganized and January 25th when the second plenary meeting was held, these delegates became restive. When they got their opportunity in the second meeting, eleven of the plenipotentiaries made speeches of protest. Said the Brazilian representative:

> It is with some surprise that I constantly hear it said: "This has been decided, that has been decided". Who has taken this decision? We are a sovereign assembly, a sovereign court. It seems to me that the proper body to take a decision is the Conference itself.[15]

Clemenceau replied with complete frankness:

> . . . I will remind you that it was we who decided that there should be a Conference at Paris, and that the representatives of the countries interested should be summoned to attend it . . . if we had not kept before us the great question of the League of Nations we might perhaps have been selfish enough to consult only each other.

Although in certain parts of his speech Clemenceau seemed to admit the theory that the authority of the Great Powers over the Conference proceedings was in their capacity as an officially designated Bureau, he clearly indicated that he regarded the participation of the small powers as a concession to the need of founding a new international order.

This principle was consistently applied in the appointment of commissions. The small states were not admitted to commissions concerned with territorial or military problems. They were appointed to the five commissions created on January 25th, for these were Conference commissions from which it would have been impossible to exclude them. They demanded and received increased representation beyond the five places which the Great Powers offered them in three of these commissions (League of Nations, Transit, Reparations).[16] But thenceforth they were given seats in only four of the many

[15] Protocol of the second plenary session of the Conference in *Miller Diary*, vol. IV, Document No. 230, pp. 68, 77.

[16] Minutes of the meeting of the Powers with Special Interests, January 27, *ibid.*, vol. IV, Document No. 231, pp. 142-153.

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organs which the Council brought into being. Each of these later commissions which had small-state members was concerned in one way or another with the general problem of a permanent international régime: economic, financial, aeronautic or Moroccan. No Belgian sat on the Belgian Commission, no Pole on any of the three Polish Commissions, and when it was necessary to draft conventions to apply to the New States, no representative of any of the New States had a place on the commission. With respect to their particular interests the Conference membership of the lesser powers gave them no privileged standing, for the Syrians and Armenians who were not Conference members were allowed to appear before the Council to present their special claims. Thus it came about that the " Powers with Special Interests " had nothing but general interests confided to them.

Japan, though ranked as a " Power with General Interests ", and given a right to sit on all commissions, tended to restrict her rôle to the defense of her special interests alone. She had representatives on only three of the six territorial commissions, and on only three of the five commissions concerned with Armistice renewal. The Morocco Committee had a Belgian and Portuguese member, but no Japanese. There was no Japanese member of the Supreme Economic Council. When the Council of Four became the paramount authority over the drafting of peace terms, Japan's place as a Principal Allied Power remained only nominal. Any one of the smaller European powers probably had more influence than Japan over the general character of the settlement.

The small powers varied greatly among themselves in influence upon the negotiations. Eleven of them took all the places on the commissions, leaving eleven with nothing to do but make speeches in the plenary sessions.[17] The neglected

[17] The importance of the smaller powers, as indexed by the number of commissions on which each was represented, was:

Belgium	9	Greece	6	Brazil	2
Serbia	7	Portugal	6	Cuba	2
Poland	7	Czechoslovakia	4	Uruguay	2
Rumania	7	China	3		

(Only nine commissions had small-state members.)

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states, most of them the small Latin-American countries, tried unsuccessfully to revolt against their more favored colleagues in early March. The occasion was the invitation to appoint five delegates of the "Powers with Special Interests" to the Economic and Fnancial Commissions. The meeting voted to demand that the number be increased to ten upon each commission, and refused to select five members.[18] Jules Cambon, who was presiding, persuaded them to be more conciliatory; they accordingly offered two lists of ten each, arranged in alphabetical order, and including Hejaz, Peru, Ecuador and Bolivia. The Council of Ten sent back the lists and asked the small powers to name their five representatives, and add four supplementary names to be used as a panel. But the South American States formed a combination and packed the five places in the Financial Commission with four of their own number. The Council of Ten simply upset the result of the election and named the small European states and Brazil to the places. Thus the third-rate states failed to advance themselves to equality with second-rate countries. The maneuver resulted in a further loss of influence, for in fixing the membership of the Aeronautic Commission—the last Commission which was to include small-state delegates—the Council quietly designated the states which were to be represented, not permitting any election "lest the incident relating to the election of the delegates to the Financial and Economic Commissions be repeated." [19]

The Commissions anad Committees

The commissions of the Peace Conference, whether they emanated from the Conference or the Council, whether they concerned themselves with the settlements of the war, the setting up of the new international order, or both, and whether

[18] B. C. 42, March 1, 1919, in *Miller Diary,* vol. XIV, p. 132; B. C. 44, March 5, pp. 150-151; B. C. 47, March 8, pp. 254-258; B. C. 48, March 10, p. 287. (Chile is a misprint for China.) Minutes of Conference of Powers with Special Interests, *ibid.,* vol. XX, pp. 209-244.

[19] B. C. 31, March 15, in *Miller Diary,* vol. XV, p. 366. This commission further reduced the influence of the small states by leaving them off its subcommissions.

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they were staffed by the Great Powers alone or by great and small powers together, were the principal agencies by which the central authority took action on its long agenda list. The Franco-German frontier, the Italian frontier and the question of guaranties were the only important subjects in the treaty which were deliberately withheld from consideration by commissions. The treaty, in the large, was written in texts proposed by the commissions and committees. Therefore the problem of the relation of the commissions to the central authority and to each other was no less significant than the problem of the relation of Council to Conference and great to small powers.

How many commissions, committees and subcommittees were set up in the course of the negotiations? Tardieu thought that there were about fifty-eight, a number which has since been much quoted, and which may perhaps be based upon the list printed in April by the Secretariat, which does in fact list fifty-eight bodies (including certain subcommittees not actually appointed).[20] Temperley, in a list which takes into account developments of later months, brings the number up to sixty-six, but a casual examination shows that there are many omissions from this longer list. Three committees of which we possess complete minutes in the Miller *Diary* are ignored in the Temperley list: namely the Subcommittee on Kiel which held four meetings from March 11th to April 24th,[21] and the Commission on a Polish-Ukrainian Armistice together with its subcommission, which between them held eleven meetings from April 26th to May 15th.[22] These happen to be instances in which the complete minutes have come to hand. The cases in which our knowledge of the existence of committees other than those named in Temperley's or the Secretariat's list is based upon more fragmentary material are numerous indeed. The commissions and subcommissions

[20] *Miller Diary*, vol. I, pp. 447-499; Tardieu, *La Paix*, p. 102 (English edition, p. 93); Temperley, *A History of the Peace Conference of Paris*, vol. I, pp. 497-504.

[21] *Miller Diary*, vol. XII, pp. 412-436.

[22] *Ibid.*, vol. X, pp. 318-488.

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frequently appointed small drafting committees which took the heaviest load of work, but left no formal record of their deliberations. For instance, the first part of the report of the Commission on Responsibilities was drafted in that way. This document is the only part of the work of this commission which has had a lasting influence in European politics. As the statement of the Allied thesis upon German war guilt it has become a political symbol of first importance, and has continued to attract a literature of criticism after the other parts of the work of the commission, relating to the trial of the Kaiser and the punishment of war atrocities, have been forgotten. The minutes of the Commission on Responsibilities show that this vital chapter was not debated in any formal session, but was written by a drafting committee of which even the membership is uncertain. Lt. Col. Biggar of the Canadian Army, Premier Massey of New Zealand, Captain Masson of the French Army, and M. Politis, the Greek statesman, were probably the authors of this document, but there is no record of its drafting.[23] No sharp line of demarcation distinguished the procedure of such small special subcommittees or drafting committees from mere informal meetings, nor the informal meetings from dinner or telephone conversations. Sometimes a subcommission was appointed by the authority of the Council, without the intermediate action of the Commission. This was the case in the appointment of a Kiel Canal subcommission of the Commission on Ports, Waterways and Railways. The same action was taken when preparations were being made to negotiate with the Germans, and the Peace Conference Secretariat appointed subcommissions by telephone,[24] this method being used in this case to keep the small powers off the subcommissions. The documents now accessible do not make it

[23] Minutes of the Feb. 24 and March 5 meetings of the first subcommittee of the Commission on Responsibilities, in *Documentation internationale. Paix de Versailles,* vol. III, pp. 254-259.

[24] Minutes of the 30th meeting, June 7, of Commission on Ports, Waterways and Railways, in *Documentation internationale. Paix de Versailles,* vol. VI, pp. 442-452. The sharp protest of the small-state members against this procedure, and the explanation of what had been done, is omitted in the official version of the minutes as printed in *Miller Diary,* vol. XII.

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possible to draw up an exhaustive list of the organs of the Peace Conference, but they are sufficient to throw light upon the way the system worked.

The Commissions and the Conference Agenda

The Foreign Offices had understood from the first that much of the labor of the Peace Conference would have to be delegated to commissions. The first November draft had recognized this principle, the third November draft had set up a list of proposed commissions and committees, and this list, or a modification of it, probably formed a part of the Tardieu draft of January 8th.[25] The need for commissions in Conference organization was never at issue, but there was a question how they would be used. Was their work to precede or follow the work of the Council? Were they to prepare questions for decision or carry out in detail decisions already made? How much of the work of the Conference was to be farmed out to them? These were vital questions because they affected the efficiency of the whole peace-making system.

Those who have written upon the Conference do not agree as to which of the ways of using commissions would have contributed most to efficiency. Wickham Steed and Colonel House thought that circumstances demanded the immediate appointment of committees to study and report upon all subjects, before they had been considered by any supreme authority.[26] Winston Churchill on the contrary writes scornfully of commissions of inquiry as "the usual household remedy" in domestic politics.[27] From his standpoint "all depended

[25] *Miller Diary*, vol. III, Document No. 159, p. 245.

[26] Steed has described the plan worked out with House while Wilson was on the water (early December): "it was, broadly speaking, that oratory should be barred from the outset by a self denying ordinance; that assent to the establishment of a League of Nations should be the first point on the agenda of the Conference . . . the plan provided also for the immediate appointment of expert committees upon the principal questions of the Peace Settlement, these committees being instructed to report by definite dates to the heads of the Allied and Associated Governments, and to cast the gist of their reports into the form of articles of a Peace Treaty." Henry Wickham Steed, *Through Thirty Years, 1892-1922*, vol. II, p. 264.

[27] Winston S. Churchill, *The Aftermath*, p. 384.

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upon a serious discussion from the outset between Gt. Britain, France, Italy, Japan and the United States, at which the main principles could be settled" and not upon the speed and thoroughness with which the problems were farmed out to commissions for analysis and report.[28] Ray Stannard Baker regarded the problem of the use of commissions as a moral issue, the issue between the New and the Old.

> The old way was for a group of diplomats, each representing a set of selfish interests, to hold secret meetings, and by jockeying, trading, forming private rings and combinations with one another, come at last to a settlement . . . the new way so boldly launched at Paris . . . was first to start with certain general principles of justice, and then have those principles applied . . . by dispassionate scientists—geographers, ethnologists, economists,—who had made studies of the problems involved.[29]

Baker's distinction is not fully applicable to the concrete situations that arose during the Conference; his interest is in the ethical plane of the negotiation, but there is no evidence that this was higher in the commissions than in the Council. In fact, the most downright, obstinate and narrow declarations of national policy are more likely to be found in the minutes of the commissions than in the records of the meetings of the Council.

The first definite proposal for making use of commissions came before the Council of Ten on January 17th. President Wilson made the suggestion, which was exactly in line with the plan that House and Steed had discussed in December,

> that the presiding officer of the Conference should appoint committees on different subjects, and then have the delegations submit their reports on the different subjects to these committees.[30]

Had Wilson's suggestion been adopted, the whole agenda would have been farmed out among commissions on the same

[28] *Ibid.*, p. 114.

[29] Baker, *op. cit.*, vol. I, p. 112.

[30] B. C. 4, January 17, 1919, in the Hoover War Library.

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day upon which the Plenary Conference was organized. This was the plan for using uninstructed committees of inquiry, in all its simplicity.

But Lloyd George objected. He feared that

> If the committees were set up a machinery might be created which it would be impossible to control. He thought it necessary to confine the action to reports on matters which concerned the delegates individually. These reports would go to the Secretariat, and be submitted to the Great Powers for their information.

This suggestion to delay the farming-out of the territorial questions until the Council of Ten was in possession of written statements of claims seems to have been inspired more by a fear of the exigent small states than by a lack of confidence in the experts, but it implied that the procedure would be to set up committees only after the Council itself had studied questions, and given instructions. The routing of a territorial question would run from the delegation to the Secretariat, from the Secretariat to the Council, from the Council to a Committee.

Clemenceau loyally explained this decision to the plenary session on the following day. He asked the representatives of the powers which had special interests

> to deliver to the Secretariat General memoranda on questions of every kind—territorial, financial or economic—which particularly interest them. This method is somewhat new, but it has not seemed right to impose upon the Conference a particular order of work. To gain time, Powers are invited first to make known their claims. All the people represented at the Conference can put forward, not only demands which concern themselves, but also demands of a more general character. The delegations are begged to present these memoranda as soon as possible.
>
> On these memoranda a comprehensive work will be compiled for submission to the Conference . . . at the head of the order of the day for the next session stands the League of Nations.[31]

[31] Preliminary Peace Conference, Protocol No. 1, January 18, 1919, in *Miller Diary*, vol. III, Document No. 199, pp. 407-408.

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The three meetings of the Council of Ten which immediately followed the first Plenary Conference were taken up with the Russian and Polish problems. The Conference had been organized without Russia, but a Russian policy was necessary. The decision to call a Russian conference at Prinkipo was taken on January 21st. Then Paderewski's request for military assistance took up half of the following day. Wilson fended off the suggestion that Poland's frontiers should be hurriedly agreed upon in connection with the problem of military aid. And then, on the afternoon of January 21st, the Council came back to the main task of making the Treaty. In accordance with Wilson's proposed agenda, already announced to the plenary session, the first item of treaty-making was the League of Nations.

> The Chairman thought it very desirable that the different delegations be put to work as soon as possible. He understood that President Wilson would submit the question of a League of Nations at the next meeting. If so, he suggested that it would be well to proceed to consider the question of reparation of damages.
>
> Mr. Lloyd George stated that he agreed to this, and suggested that the question of the League of Nations be taken up at the next meeting, and that those present lay down the general principles and then appoint an international committee to work on the constitution of the League.[32]

On the following day, January 22d, the resolution was adopted which disposed of the question of the League of Nations not only by creating a commission but also by settling in advance the question whether the League should be "created as an integral part of the general treaty of peace", whether it should be open to all, what its object should be, and what should be the outlines of its organization.[33] When Baron Makino sought to withhold Japan's consent to such a detailed

[32] B. C. 6, January 21, 1919, in Hoover War Library. The second paragraph quoted above is also printed in Baker, *op. cit.*, vol. I, p. 237.

[33] David Hunter Miller, *The Drafting of the Covenant*, vol. I, p. 76. According to Miller, the word "created" was altered to "treated" by a misprint in the minutes.

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commitment, Wilson pinned him down to the pre-Armistice contract:

> President Wilson pointed out that Mr. Lloyd George's proposal included nothing that was not contemplated when the Peace Conference was called, and that the principles of the League of Nations had been accepted at the time of the Armistice. He therefore asked whether Baron Makino wished it to be understood that the Japanese government reserved its decision with regard to bases which other powers had already accepted?[34]

The Commission on the League of Nations was the most adequately instructed of the great commissions. The Commissions on Labor Questions and on Ports, Waterways and Railways received no instructions at all, but were never deadlocked for the lack of them. The setting up of the Commission on Responsibility of the Authors of the War gave rise to no debate, but was accomplished in a resolution sufficiently definite to guide the commission debates and to constitute a step in recognizing the non-contractual and punitive principle in the peace settlement. The Economic and Financial Drafting Committees, which were set up on January 23d and 27th in order to "classify and frame in suitable language all questions coming under these categories"[35] were examples of the type of commission which House had described in December — they were expected to prepare subjects for another authority to decide rather than carry out decisions already made.

The Council of Ten covered most of its agenda list except territorial questions in the commissions set up during the last days of January. There were two subjects, however, which did not yield successfully to commission treatment. These were reparations and disarmament. A Reparations Commission was set up without adequate instructions and came to grief in consequence; the project for the creation of a Disarmament Commission was rejected on the ground that it would be necessary first to prepare adequate instructions. It is note-

[34] B. C. 7, January 22, 1919, in the Hoover War Library.

[35] Clemenceau, B. C. 10, January 24, 1919, in *Miller Diary*, vol. XIV, p. 21. On March 1 these committees were reconstituted as full commissions with authority to work out solutions of the problems they had listed.

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worthy that these two subjects, which have had such a poisonous history in post-Versailles Europe, showed themselves intractable in the earliest stage of the Conference. Both procedural methods were applied—the system of giving the commission a free hand, and the procedure of waiting until the Council could prepare adequate instructions, and both methods failed.

It is worth following in more detail the history of these attempts to arrange the discussion of two of the items on the agenda list. On January 21st, as has been noted, Lloyd George referred to the question of "reparation of damages", on the following day he made a proposal to appoint a "commission to consider the question of reparation and indemnity. President Wilson suggested that it might be well to omit the word 'indemnity'".[36] In this mild way, Wilson indicated his opposition to the inclusion of war costs in the reparations bill. But he did not pin Lloyd George to the terms of the Lansing Note as he had pinned Makino to the principles of the League of Nations. The Lansing Note of November 5th limited the Allies' claims to the reparation of damages suffered by the civilian population. The commission was put to work without instructions on the critical point whether the Allies would hold to their pre-armistice contract or go beyond it by demanding war costs. After a month of futile wrangling the commission reported its deadlock back to the Council of Ten, and asked for a decision. By this time (March 1st), Wilson was absent, and the Council refused to accept responsibility for making the decision. When Wilson returned, the serious study of the problem was taken out of the hands of the commission by experts who reported directly to the Heads of States, and who regarded the commission organization as an obstacle which should "make its report and get out of the way."[37]

The suggestion to set up a Commission on Disarmament was made by Balfour on January 21st, at the same session which

[36] B. C. 7, January 22, 1919, in the Hoover War Library.

[37] Norman Davis to President Wilson, March 25, 1919, in Baker, *op. cit.*, vol. III, p. 384.

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saw the first steps toward instructing the League of Nations Commission, and the mention of the need for a Commission on Reparations. The three topics came up simultaneously, but each received a different kind of treatment. Wilson at this time agreed that the question of disarmament was closely related to the question of strategic frontiers, but he thought it would be better for "those present to compare their views before referring it to a committee." [38]

Although there was no such comparison of views as Wilson had proposed, Lloyd George brought in a draft resolution to set up a Disarmament Commission on January 23d. This was the meeting at which the resolutions setting up Commissions on Labor, Reparations, Responsibilities and Transit were adopted, but the parallel resolution on Disarmament was not accepted. The instructions as Lloyd George had drafted them called upon the commission

> 1. To advise on an immediate and drastic reduction of the armed forces of the enemy.
>
> 2. To prepare a plan in connection with the League of Nations for permanent reduction in the burden of military, naval and aerial forces and armament.[39]

Lloyd George was interested in facilitating rapid demobilization of British troops by reducing the German army "to the minimum necessary for the maintenance of internal safety". (This was in fact the very formula of Wilson's fourth point.) But here the consequence of excluding the Germans from the Preliminary Peace Conference appeared, for, as Wilson remarked, it would be necessary to consult the Germans, "so as to give the Germans a chance to state the numbers they actually needed, and the means of consulting them would be the Armistice Commission. Orlando followed out the logic of this position by suggesting that

> . . . we could obtain prompt demobilization of the German armies more effectively by dealing with it as a condition of the renewal of the armistice through the agency of Marshal Foch

[38] B. C. 6, January 21, 1919, in the Hoover War Library.

[39] B. C. 8, January 23, 1919, in *Miller Diary*, vol. XIV, p. 3.

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and the Allied Military Advisers than by treating it as a question for the Peace Conference.[40]

Out of the discussion there emerged, therefore, not a commission of the Peace Conference to draft articles of a treaty but a committee of military advisers to concoct conditions for the renewal of the Armistice. In February, when it came time to consider the actual presentation of these terms to Germany, this decision was reversed, and the subject was moved back from the category of Armistice to the category of Peace by the impracticable suggestion that the military clauses should be the basis of the Preliminary Peace with Germany.[41]

By January 24th most of the proposed agenda which had been listed with such "system" in the November draft and the Tardieu draft had received some kind of attention in the Council of Ten. Aside from territorial questions only the following subjects had been entirely neglected:

"Stipulations of private law; settlement of credits; liquidation of sequestrations" (November draft)
"Reestablishment of the conventional regime upset by the war" (November draft)
"The freedom of the seas" (November draft and Tardieu draft)
"Publicity of Treaties" (November draft and Tardieu draft)
"International Organization for Arbitration" (November draft and Tardieu draft)
"Guarantees and Sanctions" (November draft and Tardieu draft)

The apparent neglect of certain of these items must have been noticed by Clemenceau, for he introduced a resolution on January 27th calling for the appointment of a commission to consider three of them among a very curious list of subjects.

Reëstablishment of the conventional régime of treaties.
Settlement of private claims.

[40] *Ibid.*, p. 5.

[41] See minutes of Supreme War Council, February 12, 1919, in Miller, *The Drafting of the Covenant*, vol. II, p. 165 *et seq.* This is the starting point of the episode which Baker dramatized as a plot to leave the Covenant out of the Treaty.

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Enemy ships seized at the beginning of the war in allied ports (Hague Convention of 1907).
Goods on enemy ships that have taken shelter and remained in neutral ports.
Restoration of illegal prizes.
Goods which have been stopped without being captured. (O. C. March 11, 1915.)[42]

The agenda of Clemenceau's proposed commission was something of a catch-all for neglected subjects, but it was also a disguised way of bringing up the question of the Freedom of the Seas. The Council voted against setting up Clemenceau's commission, after a brief but pungent debate:

> Mr. Lloyd George was of the opinion that a very big issue was raised by this proposal, but he did not think that all these questions could be settled in the Peace Treaty with the enemy. The whole subject appeared to him to be more suitable for the League of Nations. These matters, moreover, could be discussed in a more favorable atmosphere in the League of Nations than in a debate with Germany. It would be far more difficult for himself to make concessions in dealing with the enemy than in dealing with the League of Nations.

Evidently the canny Welshman understood that this was to become the Commission on the Freedom of the Seas. Sonnino then proposed a compromise: "four fifths of these subjects would be better dealt with by the League of Nations", but some of them, such as the disposal of enemy ships, "were strictly for inclusion in the Peace Treaty". Clemenceau agreed with Sonnino, Wilson gave his approval, and it was voted that the special cases concerning shipping should be referred to the Commission on Reparations, and questions of general principles reserved for the League of Nations.

Critics and apologists of the Paris Peace Conference have continued to point to this January period as an era of mistakes. "The great fault of the political leaders", writes Professor Seymour, "was their failure to draft a plan of procedure . . . the heads of Government did not approve, or at least did not

[42] B. C. 11, January 27, 1919, in the Hoover War Library.

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set in motion, any systematic approach to the problems of the Conference ".[43] Tardieu ascribed this indifference to the " instinctive repugnance of the Anglo-Saxons to the systematized constructions of the Latin mind ". Wickham Steed thought it was a consequence of the illness of Colonel House during the critical period in January, by which the Conference was deprived of " his guiding influence " when it was most sorely needed. " Before he could resume his activities things had gone too far to mend." These criticisms call for certain modifying comments. About half the Treaty was written by commissions appointed between January 21st and January 27th. Before the end of January all the significant items in the agenda lists had been laid before the Council and farmed out to commissions for study except four:

Territorial questions
Freedom of the Seas
General disarmament
Guaranties

Freedom of the Seas and general disarmament had been considered in the Council and postponed; territorial questions had been consigned to a procedure which left it to the claimant powers to deposit their demands with the Secretariat. The critics underestimate the grasp of the peace problem as a whole which the Conference showed in its first days.

Territorial Questions.

The Conference made two mistakes in procedure in connection with territorial questions. The first was in trusting the small powers to deposit their claims with the Secretariat, the second was in yielding to the desire of the small powers to be heard by the Council.

It has been noted that on January 18th a regular procedure had been ordained for the presentation of memoranda on all subjects through the Secretariat; on January 23d this procedure was reaffirmed as a special method for treating terri-

[43] *House Papers,* vol. IV, pp. 271-273; the citations from Tardieu and Steed are given in these pages.

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torial questions. The Council of Ten had just finished setting up its five principal commissions, when Clemenceau turned to the next items on the program.

> M. Clemenceau said that a number of territorial and colonial questions remained to be discussed. Of these the territorial were the most delicate problems.
>
> Doubtless each power would feel inclined to put off their discussion, but it must be undertaken. Before discussion these questions required classification. He would therefore beg the Governments to think of this, and at a later meeting to bring with them a classification.
>
> M. Sonnino asked whether the most practical means would not be to fix a time by which each Delegation should present their wishes. The meeting would then have a notion of the ground to be covered. This applied to the Great Powers and to the smaller countries alike. A complete picture of the whole problem would then be available.[44]

At this point Lloyd George proposed that first consideration be given to oriental and colonial questions; he met Wilson's objections by explaining that "he only suggested dealing with the East and with the Colonies in order to save time while the various delegations were preparing their case."

> M. Clemenceau suggested that a date be fixed by which all Delegations should be requested to state their cases in writing. (It was then decided that the Secretary General should ask all Delegations representing Powers with Territorial Claims to send to the Secretariat their written statements within ten days.) [The ten days would expire on February 1st.]

In the whole month of January the principal preoccupations of the Council, apart from the organizing of the Conference and commissions, were four questions: the renewal of the Armistice with Germany, the establishment of a Russian policy, the provisional protection of undefined Polish frontiers against Germans, Russians and Czechs, and finally the dis-

[44] B.C. 8, January 23, in *Miller Diary*, vol. XIV, pp. 10-12. *Cf.* Baker, *op. cit.*, vol. I, p. 253, where some of this material is quoted. The minutes do not confirm Baker's assertion that Wilson secured a postponement of the consideration of colonial questions.

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position of the German colonies. Two of these questions—the Polish and the colonial—were essentially territorial questions, but they were not treated as such. The Polish frontiers were not defined, the colonies were not assigned, even as mandates. The object of the Council was to keep peace in Poland and to decide upon a general régime for colonies. In both of these matters it was Wilson's policy that prevailed. Foch wanted the Polish frontier fixed so that the Germans could be ordered to respect it.[45] Dmowski presented Poland's territorial claims in full on January 29th, but the Council postponed action.[46] The policy of the Council in territorial matters was evinced in the "solemn warning" issued to the belligerents on January 24th that the use of armed force in securing possession of territories to which they laid claim would prejudice their claims and "put a cloud upon every evidence of title . . . and indicate their distrust of the Conference itself."[47] The Council did not at this time envisage its territorial problems in terms of particular boundary lines, but rather as a general necessity for maintaining the authority of the Conference, holding down the lid on explosions of violence, and postponing the consideration of questions which would threaten the harmony then prevailing.

The Polish question, like the armaments question, was presented to the Council as a problem to be settled definitely for the Treaty, but was acted upon only in its transitory aspect, as a matter of Armistice administration. The colonial question was treated differently from the Polish to the extent that in this case the principles of a new international order—the text of an article in the Covenant—were agreed upon, but the cases were treated alike in that the only immediate action taken lay in the field of Armistice administration. An interallied commission was sent to Warsaw to try to keep the peace, and a military committee was instructed to report upon a method for sharing the costs of occupying the colonial areas, especially Asiatic Turkey. There was no action upon Polish frontiers

[45] B. C. 7, January 22, 1919, in Hoover War Library.

[46] B. C. 15, January 29, 1919, in *Miller Diary*, vol. XIV, pp. 62-70.

[47] B. C. 9, January 24, 1919, *ibid.*, p. 17.

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and none upon the distribution of colonies, although the claims were presented in each case. The Council would not even draw provisional frontiers, nor assign provisional mandates. When the Belgians came in at the close of the long colonial debate to ask for a piece of East Africa, Lloyd George closed off the discussion by saying:

> Belgium asked for something that they had not yet started to discuss, namely, who should be the mandatory. They were making out a case that they should be a mandatory in respect to those territories, a question which had not yet been reached.[48]

Thus it came about that January ended with no steps taken toward allotting territories or assigning boundaries.

In the two meetings of the Council on January 29th the Poles had presented their full territorial claims, and the Czechs had presented their claims to Teschen. The result of the debate was the decision to send a mission to keep peace in Teschen between the two new States. The next meeting of the kind was staged on January 31st, to give the Rumanians and Serbs an opportunity to argue about their claims to the Banat—an argument which was bitter but wholly indecisive. These meetings were not intended to contribute toward making peace with the enemy, but only to help in keeping peace among the Allies. In that respect they were an application of the policy enunciated in the "warning to belligerents" of January 24th.

The long hearing given to the Poles and Czechs had shown how wasteful of time it was to present to the Council matters which were not prepared for decision. When Clemenceau wanted to pass on from the Polish-Czech dispute to the Serbo-Rumanian quarrel Lloyd George objected.

> . . . some sort of an Agenda should be formulated. . . . He inquired whether the Conference now intended to discuss European territorial questions. He thought the discussion of Poland and Czecho-Slovakia the other day had been a mistake;

[48] B. C. 18, January 30, 1919, in *Miller Diary*, vol. XIV, p. 120. The discussion of the colonial question began January 24 and ended January 30.

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a report should have been submitted before the matter had been broached in the Conference.[49]

There ensued an argument as to whether or not time had been wasted, and Clemenceau went on to rationalize the conduct of the Council:

President Wilson had proposed that they should begin to deal with territorial questions. They began with the Pacific, then passed to Africa. Now they had come to Europe, beginning with Poland, because there was a pressing necessity and fighting was taking place there. If it were not decided to hear the Rumanian case the following day, well, let it be so; but they must have courage to begin with those questions one day or other.

Lloyd George protested that he had no objection to hearing the Rumanian case, provided it was a "serious discussion" of the territorial question. At this point Wilson reverted to the plan which he had first proposed on January 17th, and which Lloyd George had then killed lest it should create commissions which the Council could not control.

His suggestion was that the British students of the subject, and the Americans, French, Italians and Japanese if they had a body of students conversant with those things, should take up any one of those questions and find out how near they were in agreement upon it, and then submit to the conference for discussion their conclusions as to what, for example, the territory of Rumania should be. They then should submit their conclusions to the Rumanians for their opinion. By this means they would eliminate from the discussion everything in which they were not in agreement.

The proposal as Wilson now formulated it was less respectful of the *amour propre* of the smaller powers than any of the earlier proposals. The experts were not to begin with a study of claims made by the interested power, but were to work out tentative conclusions independently. This method seemed all the more necessary because the delegations had not filed their

[49] B. C. 18, January 30, in *Miller Diary*, vol. XIV, p. 121 *et seq.* The further quotations are from same souce.

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claims with the Secretariat. But it was not a procedure which the small powers could be expected to accept without a murmur. Balfour was thinking of this aspect of the matter when he objected:

> He was not sure that it would not be wise to allow those people to have their day to explain their case. He thought they would be much happier, though he admitted it took up a great deal of time. He thought it would make a great difference to them if they came there and said that they would put their whole case before the conference.

Balfour's point of view prevailed. Efficiency was sacrificed to courtesy. The principle was adopted that the starting point of a discussion of boundaries would be an oral statement by a claimant. This was a departure from the earlier procedure, which had required the presentation of claims to the Secretariat. The old procedure was formally abandoned on February 1st, when "Orlando invited attention to the fact that the period granted for the submission of documents relating to territorial claims would expire on that date, and . . . no documents had been received by the Secretariat General except a part of the Greek case and a report by the Czecho-Slovak delegation." [50] It remained then to try the new procedure, and to work out a way in which the plenipotentiaries would use their experts and the Council its committees. This problem came up on the same day, immediately after the Rumanians had stated their case.

As the Rumanian delegates left the Council chamber, Lloyd George proposed the creation of a commission of experts to "clear the ground". If the experts disagreed

> The representatives of the Great Powers would be compelled to argue out the case there in that Council Chamber. But there were many questions regarding which the Great Powers were perfectly impartial. . . . He fully admitted that this procedure could not be introduced as a permanent arrangement, or be accepted as a precedent for universal application; but in the par-

[50] B. C. 20, February 1, 1919, in *Miller Diary*, vol. XIV, p. 161 *et seq.* Further quotations from same source.

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ticular case of the Rumanian claims he hoped the experts would be allowed to examine the ground in the first instance, and the representatives of the Powers would eventually decide the question.

This was exactly the treatment which Wilson had proposed giving to the questions prior to their presentation to the Council. The commission would not apply instructions to facts but merely organize material regarding which the Council had made no decision and hence issued no instruction. As if to emphasize that this was the character of the work to be allotted to the commissions, Wilson added that "only those aspects of the question which did not touch the purely political side of the problem should be examined by the experts." He wished to reserve the protection of minorities to the Council of Ten. Orlando opposed the use of commissions. "He failed to see how such procedure would expedite matters." Baker has quoted his speech in full as an illustration of the difficulties with which Wilson had to contend when he tried "to use the weapons of the new diplomacy against the old".[51] But as Baker's own text admits, it was not Wilson but Orlando who was left isolated, fighting a lone hand, in the matter of the appointment of the commission.

Despite Lloyd George's assurance that the procedure adopted for the study of the Rumanian claims would not be a precedent, it became the standard procedure. The formula of instruction (except in the case of the Belgian committee) was very broad: "to reduce the question for decision within the narrowest possible limits, and to make recommendations for a just settlement."

Throughout the month of February the Council was setting up territorial commissions and farming out territorial questions. Six commissions were set up, and eight territorial questions distributed among [52] them. All the territorial prob-

[51] Baker, *op. cit.*, vol. I, pp. 185-186.

[52] February 1, Rumanian Commission; February 4, Greek Commission; February 5, Czechoslovak Commission; February 12, Belgian Commission; February 18, Jugoslav frontiers assigned to Rumanian Commission; February 21, Danish frontier assigned to Belgian Commission; February 24, Albanian frontier assigned to Greek Commission; February 26, Commission on Polish frontiers; February 27, Central Territorial Commission.

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lems were thus distributed except those directly affecting the Great Powers. On February 18th when the Yugoslav claims had been heard Sonnino and Clemenceau agreed that neither Italian nor French territorial claims could be submitted to a committee.[53]

These territorial committees (except the committee on Belgium) received no special instructions. A debate on questions of principle took place in the Council just before the appointment of the Rumanian Committee, but did not result in an instruction. The question was raised whether the secret treaty of 1916 was still valid even though Rumania had broken it in making peace with Germany. Orlando took the pro-Rumanian view, while Clemenceau declared that the Council had already ruled against the validity of the secret treaty when it agreed to admit that country to the Peace Conference.[54] The Council came to no agreement, and left it to the committee to recur to the same debate. At the first meeting of the committee (on February 8th) the Italian delegates tried to introduce the treaty "as a basis for the labors of the committee", the British and American members objected, and the question was left "in suspense".[55]

The question of principle which arose in Belgium's case was taken more seriously because it involved a neutral power. Belgium wanted Dutch territory in Limburg and Flemish Zeeland, but had difficulty in bringing such a territorial claim under the jurisdiction of an Interallied Conference. The Belgian program called for compensations to Holland at the expense of Germany. Wilson and Balfour both saw the difficulty when Hymans was presenting the Belgian claims, and they took care to avoid entanglement by limiting the mandate

[53] B. C. 35, February 18, 1919, in *Miller Diary*, vol. XIV, p. 501.

[54] B. C. 20, February 1, in *Miller Diary*, vol. XIV, pp. 178-179. The minutes of the meeting to which Clemenceau alluded are in the Hoover War Library, B. C. A-1, January 12: "Mr. Balfour did not mind Rumania's being treated as an ally for purposes of representation but he did not want to put Rumania in the same position in which she would have been if she had fought successfully to the end. 'I think Rumania ought to get a part of Russia.'"

[55] Minutes of the Committee on Rumanian territorial claims, Photostat copy in New York Public Library, 1st meeting, February 8.

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of the committee to the investigation of the transfer of Malmédy and Moresnet to Belgium and "the possible rectification of the German-Dutch frontier on the lower Ems as compensation to Holland for meeting Belgian claims." [56]

The committee found these instructions unworkable and asked to have them changed. The French expert observed at the first meeting: "it does not seem possible to study the compensation to be offered to Holland without considering at least in a general way the concessions which would be demanded on the Scheldt and in Limburg"; [57] but the Council on February 26th persisted in its refusal to authorize the committee to discuss the territorial claims of Belgium against the Netherlands.[58] The committee confined itself to its instructions to the extent of making no comments on Limburg and Zeeland, but nevertheless it exceeded its mandate in another direction. It had been instructed to report on the cession of German territory "on the lower Ems" but it actually reported in favor of the cession of territory in the Rhine Valley, much richer, much more populous, and over a hundred miles from the lower Ems.[59]

The instruction given on February 12th to the Belgian Commission is interesting from another point of view. It was the first decision of the Council which had a formal bearing upon the question of the German frontier. In that it approved in principle the cession of German territory to Belgium and the Netherlands it went clearly beyond the contractual basis of peace with Germany. The Fourteen Points provided for Belgian restoration but not for Belgian aggrandizement. Wilson and Lansing did not advert to this aspect of Belgium's claim in the Council, and Haskins made only the mild gesture of asking:

> Whether it is possible or just to demand of Germany con-

[56] B. C. 28, February 11, in *Miller Diary,* vol. XIV, pp. 322-324; text of instruction, B. C. 29, February 12, p. 381.

[57] Minutes of the Belgian Committee, February 25, in *Miller Diary,* vol. X, p. 8.

[58] B. C. 40, February 26, *ibid.,* vol. XV, p. 81.

[59] Report of the Belgian Committee, *ibid.,* vol. X, p. 127.

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> cessions on her Dutch frontier? In this connection there is a question which ought to be considered before proceeding further. In approaching this question of compensation, the Commission should be guided by the general principles of the Fourteen Points of President Wilson.[60]

From the legal as well as the ethnic standpoint the satisfaction of Belgian claims on Germany's west frontier demanded departures from the Fourteen Points at least as great as would have been required to carry out all the demands of France in the Saar. The Belgian Committee, with the American expert concurring, reported in favor of asking Germany to surrender the industrial region of the lower Rhine. If the same committee of experts had been given a free hand to decide the Saar question, it probably would have given the valley outright to France.[61]

This history of the Belgian Committee, like that of the Polish Committee, proves that the "experts" were more hostile to Germany or more easily persuaded by interested parties than the statesmen who sat in the Supreme Council. This is exactly the reverse of the picture presented by Baker. The Council disagreed with both these committees, in each case modifying in the interest of Germany the unanimous reports of their subordinates. Ten years of experience in the working of the Treaty has taught us that the Council was right in these cases and the territorial committes were wrong, and that the Treaty would have been better if the Council had gone further than it did in upsetting the decisions of the experts.

Nowhere did the Council squander more time to less advantage than in the hearings given to the small powers. The debate on colonial claims, which as Baker has rightly observed, might well have been postponed till the more pressing European problems were solved, fills ninety-six pages of the minutes, while the territorial hearings to which the Council committed itself fill one hundred and seventy-four. The debate

[60] Minutes of the Belgian Committee, February 25, *ibid.*, vol. X, pp. 9-10.

[61] The American territorial experts had recommended this solution—see their report of January 21, in *Miller Diary*, vol. IV, Document No. 246, p. 212; compare with the more reserved attitude in February, *ibid.*, vol. VI, Document No. 441, pp. 43-52.

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on colonies resulted in an important decision of principle, but the territorial hearings were staged merely to soothe the feelings of the claimant delegates, and except in the Belgian case, led to no decisions whatsoever. After Wilson left Paris the proposal which he had originally made for preliminary examination by committees was revived by Sir Robert Borden. On February 18th, after a session had been wasted in hearing the Yugoslavs, Sir Robert said:

> It had occurred to him that possibly time might be saved if the Council made up its mind what questions could suitably be sent to the committees in anticipation of hearing statements. A list of such questions might be established beforehand, and thereby in each instance a meeting of the Council might be saved.
>
> Mr. Lansing observed that this had been discussed before the departure of President Wilson. It had been thought that many delegations anxious to make statements would be dissatisfied if referred direct to committees.[62]

The Council took no action upon the hearings given to the Syrians, Libanese, Armenians and Zionists, being as unwilling to assign to a committee the question of the carving up of the Ottoman Empire as to delegate its authority over the Rhine and Italian frontiers. This was in line with the policy used from the start in setting up the territorial committees, that they were to keep their hands off of the big political questions. When the territorial committee system was crowned on February 27th by the appointment of a Central Territorial Commission to correlate the work of the various committees and to "make recommendations as to any part of the frontiers of the enemy states which are not included in the scope of any commissions", a special exception was made of "such frontier questions as any of the Powers concerned may reserve for discussion in the first instance at the Quai d'Orsay".[63]

[62] B. C. 35, February 18, in *Miller Diary,* vol. XIV, p. 503.

[63] B. C. 41, February 27, *ibid.,* vol. XV, p. 102. The French did not actually keep the Rhine and Saar questions out of the hands of committees. On March 10 at an informal meeting of House, Clemenceau and Lloyd George a committee was appointed to study the Rhineland problem—an uninstructed committee to study and report differences; on April 1 a Committee on the Saar was appointed to carry out definite instructions.

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The question naturally arises, why was not this system of territorial committees, as completed on February 27th, set up at the time the other elements of the commission system were established? The answer is not to be found, as Baker implies, in the Council's suspicion of the experts, for the February system of territorial committees still left the big political questions in the hands of the Council. Neither is the delay explained as Tardieu declares by Anglo-Saxon antipathy toward systematic procedures, for all the sections of the agenda except the territorial were systematically farmed out, and it was the Anglo-Saxon Wilson who twice proposed the preliminary farming out of the territorial questions. The reason for the delay was twofold, first: preoccupation with problems of future international organization, and second: the fear of trouble with the smaller powers. On January 17th there seemed to be danger that the delegates of the lesser states would be too influential, and on January 30th that they might become too resentful to permit the smooth working of the peace-making machinery. The two territorial procedures, making use of the Secretariat in January, and of the Council in February, were designed first to muzzle and then to placate the lesser Allied States. The real work of drawing the frontiers began in the committees.

The Preliminary Peace.

Although Article I of the Rules of the Conference stated that it was the first object of that body to make a preliminary peace, the principal decisions made in the first month of its sessions, while Wilson was present, had to do either with the Armistice or with the Covenant. The day-to-day administration of European affairs in enemy and allied countries, and the working out of plans for a new international order, so far occupied the attention of the negotiators that the idea of a preliminary peace had to be born again, and to assume its first clear and practical form as an extension in their minds of the idea of the Armistice. The Armistice problem had made such encroachments upon the time of the Council that the transition seemed to be a natural one. The increase, at the expense of the Peace

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Treaty, of Armistice and related business can be calculated from the space given to each in the minutes of the Council. In the seventeen sessions from January 12th to 27th, while the Conference and the great commissions were being set up, the Armistice took up only fifteen per cent of the time; in the twenty-one sessions from that day to February 14th, when Wilson left Paris, it took thirty-six per cent, and if the time consumed in the hearings given to the smaller powers be regarded as a concession to the need of maintaining order from day to day (which it was) and not as a contribution toward agreement on territorial questions (which it was not), the proportion of time given to the study of the emergencies of the hour, as against the permanencies of the treaty, rises to seventy-two per cent.[64]

This increased proportion of time devoted to Armistice affairs was the revenge which Europe exacted of the Conference for the delay in making peace. The French November plan had segregated four stages in the settlement: the Armistice was to run till the Preliminary Peace was made; the Preliminary Peace was to lead the way to a General Peace or settlement of the war, which in turn was to make possible the Organization of the Peace or the League of Nations. The London Conference telescoped the membership, and Wilson telescoped the agenda, of these various peace conferences. But the problem which a preliminary peace was intended to solve remained, and pressed upon the Conference so persistently that the subject matter of a preliminary peace was constantly

[64] The following computations are based upon number of topics discussed and number of words in the official minutes. They can have only approximate accuracy:

The Distribution of Working Time in the Council of Ten

	17 Sessions Jan. 12-27	21 Sessions Jan. 28–Feb. 13
Setting up the Conference. (Representation; Press; Language, procedure, etc.)	60%	
Farming out work to committees	13%	5%
The debate on the colonies (acceptance of mandatory principle)	12%	23%
Hearings to small powers on territorial questions		36%
Armistice administration	15%	36%

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detaching itself from the procedure for formulating a general peace, and entering the agenda of the Armistice negotiations. The problem of German disarmament was transferred in this way on January 23d, because the Armistice Commission was the only allied organ in contact with the enemy.[65] The resulting confusion between Armistice and Peace was evidenced on February 1st, when the Admirals were asked to report on "Naval clauses to be introduced into the Peace Treaty", whereas the military men had been instructed to prepare clauses for the Armistice.[66] Still other subjects appeared on the borderland of Armistice and Peace. The opening of hostilities between Germans and Poles made the Polish frontier appear to be an Armistice question; the advance of winter and the march of hunger through Central Europe called for elaborate Armistice negotiations over the import of food and raw materials into Germany. German disarmament was found to call for the establishment of some control over her metallurgical industries. The Armistice Commission was becoming the agent in such highly complex negotiations covering so many fields that it was logical to consider giving to it a less exclusively military character. Accordingly Wilson and Lloyd George proposed on February 7th that further negotiations with the Germans should be entrusted to a civilian commission.[67] On February 10th Klotz proposed certain financial clauses for the Armistice renewal which Wilson thought should be left to the Economic Commission of the Peace Conference and the final Treaty.[68] The Commission on the Responsibilities of the Authors of the War discussed on February 3d, and voted on February 7th, a demand that the enemy should be required to surrender documents and suspected individuals as a condition of Armistice renewal.[69] Balfour mentioned this demand

[65] B. C. 8, January 23, *Miller Diary*, vol. XIV, p. 5.

[66] B. C. 20, February 1, *ibid.*, p. 182.

[67] B. C. 25, February 25, *ibid.*, p. 242.

[68] B. C. 27, February 10, *ibid.*, p. 302.

[69] Minutes of the Commission in *Documentation internationale. Paix de Versailles*, vol. III, p. 25.

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to the Council of Ten on February 7th, but did not press it.[70] On February 12th Clemenceau presented a memorandum asking that "in the next agreement concerning the renewal of the Armistice" the Germans should be required to hand over 5,200 horses, 204,000 cattle, and comparable quantities of her live stock and seed. This was a matter properly falling within the domain of the reparations settlement. Thus there was a tendency in the first part of February to pour the pressing problems into the Armistice negotiations, because the Armistice Commission alone was in contact with the enemy, and the Peace Conference was not. If the Peace Conference was using its time to keep order among the Allies, must the Armistice Commission thus undertake to impose the elements of a peace settlement upon the enemy?

In the morning session of February 12th Balfour analyzed with his usual clarity the tendency to confuse Peace terms and Armistice terms, and proposed

> that only inevitable small changes, or no changes whatever, should be made in the Armistice until the Allies were prepared to say to Germany: "these are the final naval and military terms of peace, which you must accept in order to enable Europe to demobilize and so to resume its life on a peace footing and reestablish its industries."
>
> President Wilson said that Mr. Balfour's proposal seemed to suggest to him a satisfactory solution . . . [71]

It was just three weeks since the vote of the Council of Ten had shifted this subject of German disarmament from the agenda of the Peace Conference to the Armistice, and now it was shifted back again. The Council voted to force Germany to accept "detailed and final military, naval and air terms", and after the "signature of these preliminaries of peace" to permit food and raw material to go through to her.

With this proposal, which Baker erroneously ascribed to Wilson, the Conference turned full circle and came back to the idea of a preliminary peace.[72] It must be noted, however,

[70] B. C. 27, February 10, in *Miller Diary*, vol. XIV, p. 310.

[71] B. C. 29, February 12, *ibid.*, pp. 335-336.

[72] Baker, *op. cit.*, vol. I, p. 290.

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that the February plan for a preliminary peace bore no procedural relation to the November plan, which had by this time been forgotten. The November plan had been inspired by a feeling that the political terms must be dictated to the enemy; the February plan owed its origin to the thought that the military terms be discussed with him. The November plan had provided for the admission of the Germans to the Peace Conference after the signing of the preliminaries; the February plan envisaged no such consequences, but provided rather that the result of the signing of a preliminary peace would be an easing of the blockade.

The flow of subject matter from the Peace Treaty to the Armistice renewal terms had caused the latter to be rechristened a preliminary military treaty. The same process continued after Wilson left. On February 22d the settlement of frontiers, reparations, economic clauses and war responsibility was given precedence along with the military terms. This was exactly the content of the preliminary peace as planned in November. But then the American delegates, by using the phrase *inter alia,* left the way open for the inclusion of the Covenant in the preliminary treaty,[73] and when Wilson returned to Paris he clinched the point on March 15th by reminding the public and the Conference that the decision to include the League as an "integral part of the general treaty of peace" had not been abandoned. Thus once again, in February and March as in December and January, the preliminary peace was telescoped with the general peace by expanding its agenda.

When this second cycle was completed with Wilson's announcement of March 15th, the situation differed from that of January in the all-important respect that the Covenant was already drafted, and the statesmen were finally immersed in the occupation of assigning territories and specific advantages to the Allied countries at the expense of the enemy. It now

[73] B. C. 37, February 22, in *Miller Diary,* vol. XV, p. 19; *House Papers,* vol. IV, p. 340. Col. House noted in his diary his intention to block any future attempt to exclude the League of Nations from a preliminary peace.

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appeared that the supremacy of the Plenary Conference, the participation of the small powers in the settlement and the preoccupation with the general international aspect of problems constituted an inseparable triad. When the agenda shifted from the "organization of the Peace" to the "settlement of the war", the Plenary Conference was finally and conclusively superseded by the Council.

The work of the Plenary Conference, the great task of defining the outlines of a new international order, had been carried as far as it was destined to be carried by the end of February. The draft of the Covenant had been presented to the Plenary Conference, and the Labor Section of the treaty had passed its second reading. The Transit Commission was still working on general conventions of freedom of transit. The ground that had not been won for international institutions by the 28th of February was not destined to be won at all. Thenceforth there was recession, not only in general spirit but in numerous points of detail.

At this moment the drafting of the specific peace settlement with the enemy was just getting under way. The creative effort of the Plenary Conference was ending, and the arduous task of the Supreme Council was beginning. It was the natural consequence of this change that the Supreme Council should undergo further development to equip it for its greater responsibilities. Between March 7th and March 24th an informal meeting of Clemenceau, Lloyd George and House developed into the Council of Four, a new form of the Supreme Council, which made no pretense of recognizing the formal legal consequences of the membership of the lesser states in the Conference. When membership, organization and agenda were different, is it strange that the spirit of the Conference should be different too? Observers detected a "slump in idealism", a "revival of imperialism", an increase in the tension of rivalries all along the line.

A historical judgment on the organization of the Peace Conference depends largely upon an evaluation of this changed atmosphere. Did it arise because the most contentious questions were then brought forward or because they had not been

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brought forward earlier? Was it a merit of the Conference to postpone contention and preserve a semblance of harmony until the principles of the new international order were established, or was it a fault in the Conference to permit widespread unrest and uncertainty to strain the patience of the people to the point where their clamor made wise solutions difficult? If, for instance, Fiume had been discussed in February, and the League postponed to April, would Italian opinion have been more conciliatory on Fiume or less coöperative in the question of the League? Would it have been possible for the Conference at any time and by means of any possible organization to have established stability without destroying hope and illusion? At this point the historical problem of Peace Conference organization merges with the broader problem of public opinion upon the terms of peace.

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THE MODERN SYSTEM OF PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

A GENERATION ago the pacific settlement of international disputes occupied a minor place in the treatises on international law and the practitioner had to be careful not to think too highly of it, under pain of being thought sentimental or queer. Arbitration was a method of settling disputes that did not count, but it was not applicable to anything important and was not taken seriously as a real substitute for war. In fact, the treatises usually called it a means of settling disputes falling short of war and bracketed it with pacific blockade, retorsion, etc.[1] At the present time the pacific settlement of international disputes is, as it has been for several years, front page news, not only in its use but in its development. Scarcely a month passes but adds to the mechanism of the system that is growing up. Everybody recognizes it as a factor to be reckoned with in inter-

[1] Pacific settlement has steadily received more adequate treatment by the treatise writers of the last 100 years. Vattel (1758) devotes a chapter to it before examining war, but Wheaton (1836) mentions only mediation. Kent (1826) refers to arbitration in a chapter "of the declaration and other early measures of a state of war". Woolsey (1860) treats it as a prospective development. Bluntschli (1867) touches it in a chapter. Creasy (1876) deals with arbitration and political devices in a chapter "on the conflict of international rights". Hall (1880) has a chapter on "amicable settlement of disputes and measures of constraint falling short of war" under the normal relations of states. Lorimer (1883, *Institutes*, II, p. 156) rightly calls arbitration "only a new form of combat", concluding that it is the "scientific solution" of the ultimate problem of international jurisprudence (*ibid.*, p. 208). Martens (*Traité*, 1883) in a final book on international administration treats in three chapters the "law of international constraint and international conflicts", war, and neutrality. Lawrence (1895) casually mentions arbitration in a final chapter of Part III, The Law of War. Bonfils and Fauchille in every edition since the first in 1894 devoted a part to "international contentions and means of settling them". Wilson and Tucker (1901) have a chapter preceding war. Moore's (1906) chapter on "modes of redress" is similarly placed. Wilson (*Handbook*, 1910) devotes a part to international differences, as do Hershey (1912), Oppenheim (1905), Hyde (1922) and Fenwick (1924). Hudson (1929) has chapters on international claims and pacific settlement. Stowell (1931) treats pacific settlement in three separated chapters, distinguishing between individual and collective jurisdiction.

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national relations at every turn. The main developments have been examined fully in detail as they occurred, but there is emerging, if there has not already emerged, a system, elaborate, flexible and expansive, which makes a forest out of the trees. It seems worth while to attempt to set forth in an orderly manner the structure of this system as a whole.

Arbitration in its modern employment began as a political life-saver. Lord Grenville and John Jay used it in the treaty of 1794 to dispose of three questions with which they did not know what else to do.[2] It became popular thereafter as a political convenience, employed regularly by big states when they had cases to win against small ones and when they wanted to eliminate nuisances in their relations with their military peers.[3] Its extensive application to mixed claims was a combination of disposing of wholesale disputes, of withdrawing them from the jurisdiction of local courts and of establishing legal titles in cases that were hardly of political consequence.[4] The treaty of Washington of May 8, 1871, took some six years to negotiate and in practical effect amounted to pooling counter claims and eliminating the lot.[5] The United States was almost certain to win the *Alabama* claims under Articles I-XI and Great Britain the claims under Articles XII-XVII. The Geneva award made the deepest impression throughout the world,[6] especially since it was promptly paid, though that was

[2] Samuel Flagg Bemis, *Jay's Treaty*, pp. 259, 279, 293.

[3] As late as 1913 the United States instructed its minister to inform Colombia that "the United States, in harmony with the attitude of all the great powers, is unalterably opposed to the arbitration of any of its political acts". But it was "willing to submit" the "difference of views concerning the material claims of Colombia" under conditions "that must clearly specify the points to be considered" (*For. Rel., 1913*, p. 293).

[4] Manley O. Hudson, *Cases on International Law*, chap. xii; Myers, *Arbitration in the Americas*, p. 114; Jackson H. Ralston, *International Arbitral Procedure, passim.*

[5] See the account of the negotiations, Moore, *International Arbitrations*, I, pp. 553, 604, 624, 683-702.

[6] The organization of the Institut de droit international and of the Interparliamentary Union, sundry parliamentary resolutions, an increase in arbitrations and several monographs—notably those of Belaerts, Di Marco, Hedlund, Paretti and Rouard de Card—were directly or indirectly inspired by it. The interest in arbitration then begun has never ceased.

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a foregone conclusion because neither the United States nor Great Britain would have consented to submit to the hazard of the court without being ready to abide by the verdict. In Latin America, where all the states used the same law and boundaries originated in Spanish decrees, all forms of pacific settlement had been stipulated and used since the 1830's. In later years there were significant efforts in South America to apply the arbitration code elaborated by the *Institut de droit international* in 1875. When the International Conference of American States met at Washington in 1889-90 the group manifested a desire to do something in the line of pacific settlement. The result was an excellent resolution adopted by the conference on April 18, 1890, and signed as a treaty by half a dozen states on April 28. Although nothing else came of it directly, it encouraged the making of general arbitration treaties.[7]

When the First Hague Conference convened in 1899 there existed one general arbitration treaty—between Argentina and Italy—and a small number of compromisory clauses,[8] some special to the treaties containing them and others applying generally to relations between the contracting states. The great contribution made by the Hague Conference in the convention on the pacific settlement of international disputes was to identify and define good offices and mediation, commissions of inquiry and arbitration as methods and to establish an arbitral forum with procedural provisions in the Permanent Court of Arbitration.[9] The jurisdiction established by the convention was absolutely optional, except possibly for good offices and mediation, but as a pertinent codification the treaty immediately became the nucleus of development. Not only was the court used,[10] but the very existence of such a forum

[7] Myers, *op. cit.*, p. 154 *et seq.*

[8] *Conférence internationale de la paix,* 1899, 4e partie, annexes, 20. There were listed seven multilateral clauses, the one general treaty, 12 general clauses and 32 compromisory clauses.

[9] William M. Malloy, *Treaties, Conventions, etc.,* II, p. 2016.

[10] Nineteen cases 1902-1926 and three commissions of inquiry; the awards are collected in Carnegie Endowment for International Peace, *The Hague Court Reports,* and George Grafton Wilson, *The Hague Arbitration Cases,* and have been printed in the Judicial Decisions, *American Journal of International Law.*

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encouraged the making of bilateral treaties of general arbitration stipulating reference of disputes to it, within definitions of jurisdiction contained in the treaties.[11] These bilateral treaties ranged all the way from entirely unrestricted obligations—some of which are still in force—to cautious engagements making the "weasel" exceptions of "national honor and vital interest." The Second Hague Conference improved the convention in many respects and reënacted it in a form which has been ratified by two-thirds of the 44 signatories.[12] The conference tried hard to produce a list of questions subject to obligatory obligation, but failed, as it also failed to bring into existence a Court of Arbitral Justice and an international prize court.[13]

In 1907 and afterward the organization of arbitration was a fixed international policy, actively pursued in many quarters but without any overt attempt to interlock it officially with military policy as a brake on the latter. Such a linking was adumbrated when President Taft signed in August, 1911, treaties with Great Britain and France which would provide for the settlement of all disputes, by arbitration if justiciable and by commission of inquiry otherwise.[14] Senator Lodge for pure "patriotism" and Senator Bacon as protector of repudiated state debts saw to it that the treaties did not serve the President's purpose. Nevertheless, a fundamental idea was born of the effort. In 1913 William J. Bryan, without thought of the historical development of pacific settlement but drawing

[11] The reader who wishes to examine the character of the bilateral treaties negotiated in the period between 1899 and 1907 will find some of them in Cour permanente d'arbitrage, *Traités généraux d'arbitrage,* I.

[12] Malloy, *Treaties, Conventions, etc.,* II, p. 2220. The 1907 convention is at present in force between 31 states; its predecessor of 1899 is in force between 16 states and, respecting them, of 28 others; see Cour permanente d'arbitration, *Rapport du Conseil d'administration . . . 1930.*

[13] See William I. Hull, *The Two Hague Conferences,* pp. 267-448; James Brown Scott, *The Hague Peace Conferences of 1899 and 1907,* I, pp. 319-385, 423-511. A narrative of the proceedings paying special attention to development of formulas is in Myers, *op. cit.,* p. 193 *et seq.*

[14] Myers, *Arbitration and the United States,* pp. 524-534; *Americal Journal of Int. Law,* V, p. 451; VI, pp. 167, 614; XIII, p. 773, and *Proceedings,* 1912, pp. 102, 106, 209.

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his plan from experience in the conciliation of labor disputes,[15] proposed to add to the existent arbitration treaties a contract to submit all disputes not otherwise settled to a commission of inquiry and to refrain from hostilities pending the commission's investigation and report.[16] Thirty of those treaties for the advancement of peace were signed. On August 13, 1914, the Senate considered eighteen of the treaties.[17] Senator Lodge and forty-five of his colleagues were absent: the treaties were approved.[18] Throughout the Great War the formula for peace projects was based on this fortuitous circumstance. Avoid war by settling all disputes pacifically; submit justiciable disputes to judicial or arbitral tribunals; investigate, report and undergo a "cooling off" delay respecting the rest; consolidate any gains possible in international practice in conventions drawn up by periodic conferences—that was the substance of the programs which cropped up the world around.[19]

Covenant and Court

At the Paris Preliminary Peace Conference these formulas were written into the Covenant of the League of Nations.[20] It is no part of the present purpose to analyze formulas

[15] Remarks of James Brown Scott, American Society of International Law, *Proceedings,* 1929, p. 172.

[16] The writer's *The Commission of Inquiry: The Wilson-Bryan Peace Plan,* which has been published also under other titles, records the circumstances of the negotiations and the technical antecedents of the plan; Jackson H. Ralston, *Arbitration from Athens to Locarno,* p. 287; *American Journal of Int. Law,* VII, pp. 566, 823; VIII, pp. 341, 565, 876; IX, p. 175.

[17] Myers, *Arbitration and the U. S.,* p. 537; *Cong. Rec.* 59, pt. 4, p. 3693.

[18] Carnegie Endowment for International Peace, *Treaties for the Advancement of Peace,* where the texts of all these treaties negotiated are printed. The texts are analyzed by George A. Finch, in *American Journal of Int. Law,* VIII, p. 565, and X, p. 882.

[19] Compare Leonard S. Woolf, *The Framework of a Lasting Peace*; Theodore Marburg, *League of Nations: A Chapter in the History of the Movement.* The final conclusions of the League to Enforce Peace, in form a draft convention, are printed in *World Peace Foundation Pamphlets,* VII, No. 9, p. 554.

[20] For the projects under consideration at Paris see Hunter Miller, *The Drafting of the Covenant,* II, pp. 3-145, 231-255, 580, 648, 672, 683, 744. These include various American, English and French drafts, as well as German and Italian ones, besides commission texts.

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technically, but rather to point out what ideas have guided, controlled and enjoined national policies, individually and collectively. In foreign offices it is the general significance of engagements taken which affects national attitudes in determining general policy; technical interpretation occurs when application is proposed or new engagements are contemplated. After the Covenant of the League of Nations came into force on January 10, 1920, the Member States found themselves bound to the following:

> An agreement to submit "any dispute likely to lead to a rupture . . . either to arbitration or judicial settlement or to inquiry by the Council."
>
> An agreement "in no case to resort to war until three months after" the result of such submission is known.
>
> An agreement to "submit the whole subject matter to arbitration or judicial settlement" whenever "they recognize" such submission "to be suitable."
>
> Agreements to "carry out in full good faith any award or decision that may be rendered" and not to resort "to war against a Member of the League" which complies with either.
>
> An agreement to submit any dispute likely to lead to a rupture, and not submitted to arbitration or judicial settlement, to the Council for conciliation.
>
> An agreement not to go to war with any party "which complies with the recommendations of the report."
>
> A joint declaration on the part of each Member State that it is "the friendly right" of each other Member to bring to the attention of the Council or Assembly "any circumstance whatever . . . which threatens to disturb international peace or the good understanding between nations upon which peace depends."
>
> A joint declaration on the part of each that "any war or threat of war" is "a matter of concern to the whole League," which "shall take any action that may be deemed wise and effectual to safeguard the peace of nations."

These systematic agreements and declarations of Articles 11, 12, 13 and 15 of the Covenant constitute international conventional law for 55 states, and it may be doubted if, in practice, any other state could afford not to abide by their sub-

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stance, even though deviating from the prescriptions as to specific forums. In briefest compass they record agreement that no war shall take place prior to the employment of some form of pacific settlement to the dispute, the form being optional with the disputants. The obligated states agree to submit disputes at a stage when they are "likely to lead to a rupture," which might or might not be before formal severance of diplomatic relations. Even prior to that stage another state has a friendly right to bring up a matter through the League machinery, and this right runs even while a difference is only a threat to good understanding between the parties. In case of a sudden outbreak or threat of war it is mandatory to "take any action that may be deemed wise and effectual to safeguard the peace of nations."

The states which assumed those obligations did so consciously.[21] It is with no implication of bad faith that I call attention to the practical circumstance that the range of those engagements is such that it is advisable for an obligated state to confine its policy within them rather than to attempt to circumvent them. From an ultralegal point of view, they are in spots semiporous, but no state is likely to test the porosity with malice prepense. What strain a sudden crisis might produce can be better considered when all the nascent structure of pacific settlement is in view. Here it may remarked that added strength has been imparted to the principles by elasticity of application, continuity of examination, the value of piecemeal adjustment and the attrition of repetitive reference.

Article 14 of the Covenant reverted to the court which had failed to be created in 1907. The Council was to formulate a plan and submit it to the states for adoption. The League, making use of its own organs for the election of judges, was able to formulate an acceptable plan, which was opened for signature on December 16, 1920.[22] It was ratified and judges

[21] The ratification of the executive governments was approved by parliaments in the case of each former belligerent. In the case of the original Members who had been neutral, ratification was similarly approved. States admitted to membership subsequently committed themselves further by filing the necessary application.

[22] League of Nations, *Treaty Series*, VI, p. 244. The protocol is Registra-

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were elected under it by September, 1921, and the Court was ready for business in March, 1922.

Arbitration, the highest previous method of pacific settlement, is the solution of disputes by the parties on the basis of respect for law and by judges of their own choice. It is possible to respect law at quite a distance from it; judges of your own choice may satisfy you more fully than they satisfy legal standards. The Permanent Court of International Justice represents a further step, providing for the solution of disputes on the basis of law and by judges who are independent and serve fixed terms. Within the corners of the Statute and any special terms of reference, their sole duty is to administer the law, to which their loyalty belongs rather than to the disputants.

The Court applies: [23]

1. International treaties "establishing rules expressly recognized by the contesting states", that is, in force or accepted by them;
2. "International custom, as evidence of a general practice accepted as law";
3. "The general principles of law recognized by civilized nations";
4. "Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law", so far as decisions and teachings are applicable between the parties and are germane to the case at issue.

The fundamental jurisdiction of the court is optional. It "comprises all cases which the parties refer to it and all

tion No. 170 in the files of the Secretariat, under which number all changes of status are recorded in the Annexes following each 100 published treaties. These records are in Vols. XI, XV, XXIV, XXVII, XXXIX, XLV, L, LIV, LXIX, LXXII, LXXVIII, LXXXVIII, XCII, XCVI, C, CIV, etc.

[23] Art. 38 of the Statute covered by the Protocol of Signature. On the development of the definitions from Baron Descamps' suggestion see *Permanent Court of International Justice, Advisory Committee of Jurists, Procès Verbaux* . . . . June 16–July 24, 1920, pp. 306-311, 322, 331-339, 344, 351, 548, 567, 584, 605, 635, 648; League of Nations, *Records of the First Assembly, Meetings of Committees,* I, pp. 488 (Art. 35), 385, 403; *Plenary Meetings,* pp. 463, 475.

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matters specially provided for in treaties and conventions in force."[24] Such jurisdiction, as will appear, is in reality more extensive than might be assumed; but that fundamental statement of a jurisdiction both *ratione materiæ* and *ratione personæ*[25] is believed to be the only proper starting point. The essential value of human institutions is not what they enjoin upon the collective will but the direction they give to collective habits of mind. Whether by voluntarily assumed obligation or by the habit of society, an international court must depend for its opportunity to perform its function upon the willingness of states to submit matters to it, either as the disputes demand settlement or by the fulfilment of treaty stipulations already taken, as an expression of policy. So much was not in issue at the making of the Statute; but a large number of states, for various reasons, wished something more than merely optional jurisdiction. On the one hand, there was general agreement upon some categories of justiciable disputes identified by a definition in Article 13 of the League Covenant. On the other hand, there was a feeling that the creation of the Court was at the moment more important than its perfection, and that the first step was to bring into existence a court good enough to command general support.[26]

A compromise between the two attitudes resulted in the assignment of additional jurisdiction for states willing to accept it. At any time any state which had accepted the primary jurisdiction of the court was enabled by the second paragraph of Article 36, protocolized as an "optional clause",[27] to " recognize as compulsory *ipso facto* . . . the jurisdiction

[24] Art. 36 of the Statute; on its development see *Permanent Court of International Justice, Advisory Committee of Jurists, Procès-Verbaux* . . . June 16-July 24, 1920, pp. 277, 281 *et seq.*, 311 *et seq.*, 543, 547, 566, 583, 604, 615, 618, 627, 635, 648; League of Nations, *Records of the First Assembly, Meetings of Committees,* I, pp. 488 (Art. 33), 380 *et seq.*

[25] *Publications of the Permanent Court,* Series E, No. 6, chap. iii.

[26] For the debates see League of Nations, *Records of the First Assembly, Plenary Meetings,* pp. 462, 467, 474, 487-497.

[27] The vote resulting in this decision is in League of Nations, *Records of the First Assembly, Meetings of the Committees,* I, pp. 408, 611, 615, 617; *Plenary Meetings,* pp. 443-457, 467, 478.

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of the Court" in all or any of the classes of legal disputes concerning:[28]

a. The interpretation of a treaty;

b. Any question of international law;

c. The existence of any fact which, if established, would constitute a breach of an international obligation;

d. The nature or extent of the reparation to be made for the breach of an international obligation.

This jurisdiction, if accepted, abolishes the special agreement, or *compromis,* for its essential purpose is to render the parties to it reciprocally suable by each other. The accepting declaration "may be made unconditionally", that is, conditions to it are negatively permitted as a temporary derogation. Two conditions are regarded as normal and constant. While declarations run only between declarants, they may also be subject to "reciprocity on the part of several or certain" states; and they may be limited as to time. The "optional clause" is the touchstone and barometer of the growth of the system of pacific settlement, viewed institutionally.

All of this burgeoned suddenly in the world, between 1919 and 1922, in the twinkling of Clio's eye, as it were. If the muse of history were asked to explain the suddenness of the development, she would doubtless revert to the ripening of social processes; it is sufficient here to note that immediately after the Great War a system of pacific settlement of some fundamental importance came into being. The principles brought into force were technically of a high order and exceptionally complete, so far as they went, but it is their

[28] The definition reached the Statute by transfer from Art. 13 of the Covenant. It appeared there by the adoption in the League of Nations Commission on March 24, 1919, of an amendment to Art. 13 proposed by Lord Robert Cecil (Miller, *op. cit.,* I, p. 327; II, pp. 348, 352). The definition was first formulated by the group of British students of the question in order to be somewhat specific as to the "justiciable questions" of which protagonists of a league of nations were talking. The definition was incorporated in Art. 3 of the Phillimore plan (Miller, *op. cit.,* II, p. 4) and something of its origin is related in the memorandum accompanying that plan, published by Lord Phillimore separately under the title *Schemes for Maintaining General Peace,* pp. 28, 29 (Great Britain, Foreign Office, *Peace Handbooks,* No. 160).

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influence on international relations rather then their technical excellence which commands primary attention. All that was agreed to respecting pacific settlement in those early postwar years amounted to enjoining on states the necessity, under pain of treaty violation, of employing some form of international adjudication, albeit of their own choice, before resorting to war.[29] Entrance upon or drifting into belligerency became legally awkward, and the attention of policy at all capitals became diverted to examining and developing methods of avoiding such an awkward situation. The concentration of attention was assisted by the fact that the engagements taken were all multilateral and not only ran severally between all contractants but imposed substantially the same considerations upon the conductors of all national policies. When the 1920 Assembly opened the Court Statute for signature the Covenant as a multilateral treaty was the equivalent of 861 bilateral arbitration treaties. Now, with 55 parties, it is equivalent to 1485 bilateral treaties. So large an adoption of definite principles could not but set up fashions in international attitudes, even if unaided by national dispositions to adapt policy to new standards of pacific settlement.

Encouragement of Conciliation

As a matter of history, the principles of pacific settlement described and accepted were entirely agreeable to the contracting governments, even if they were undigested in relation to policy.[30] They immediately became the nucleus of develop-

[29] Art. 12 of the Covenant is the controlling obligation. It provides:

"1. The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to inquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council."

[30] The principal factor which has not been determined is that of "sanctions". It is not discussed here for that reason and for the additional one that it is a subjective consideration of which the value has continually changed without definite effect on the main lines of actual development. The obligation (Art. 16 of the Covenant) is to apply the pacific system of the Covenant, which is also insured by the multiple pressures operative in the society of nations. Sanctions

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ment. Denmark, Norway and Sweden, having previously based their policies upon such principles, proposed amendments to the League Covenant before it was in force. These consisted of what might be termed a statute of conciliation. The contribution to the development of pacific settlement made by the Bryan treaties for the advancement of peace in 1913-14 was that they provided a practical method of applying pacific settlement to all disputes. War had long been regarded as a method of settling all disputes, while pacific settlement was considered as appropriate only for certain ones. The Bryan treaties furnished a means of arbitrating what you wished and investigating the rest into innocuous desuetude: the pacific settlement system became coextensive with the war system and, therefore, came into direct competition with it in the field of policy. Appreciating this situation, the Scandinavians wished to set up conciliation machinery as adequate as the judicial and arbitral equipment offered by the Permanent Court of Arbitration, the Permanent Court of International Justice, and the network of bilateral treaties.[81]

The Scandinavian governments referred to "conciliation", thus bringing into consideration a distinction which had grown up in the numerous peace plans put forward during the war. The Bryan treaties provided only for commissions of inquiry to investigate and report on facts but not to negotiate the parties into agreement. The salient instance of the latter method had been the North Sea (Dogger Bank) incident of October 21-22, 1904. In this case the commission's report of February 26,

have been studied several times and each time new avenues of unsanctioned agreement have been opened up.

Historically, sanctions were put forward in the plans during the war as a device for including in a constructive plan the armed strength which had hitherto been so lawless. If armament could not be abolished, its transmutation into a police element would be an improvement over its capricious use. Opinions as to the intrinsic value of military force and the propriety of employing it have greatly changed since 1919 and are still changing. Until the revaluation in executing the formula "arbitration, security, disarmament" has reached a stable posture, the place of sanctions in the system can scarcely be perceived with certainty.

[81] *Records of the First Assembly, Meetings of the Committees*, I, pp. 71, 73, 88.

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1905, had, with the consent of the parties, indicated a monetary settlement.[32] Whether by knowledge of that extension of jurisdiction or by the instinct of plan-makers for simple and distinguishing language or by definite intention of improvement, the war plans for a peace league called for a court first and a "council of conciliation" second.[33] The combination imparted a feeling of completeness to the schemes, well adapted to catch the public mind, at the education of which those schemes were directed. In the war discussions, "conciliation" acquired an identity of its own, but never disowned its parent, the commission of inquiry. "Conciliation" came to mean either a temporary or a permanent commission which would investigate a dispute and attempt to bring about an agreement between the parties, before or after rendering a report. In this sense the Scandinavians proposed their addition to the peace machinery of the Covenant.

The Scandinavians also had an eye on the jurisdiction of the Council, exhibiting a healthy democratic suspicion of the powers of the League's executive body. The formula of Article 12 of the Covenant is that disputes shall be submitted "either to arbitration or judicial settlement or to inquiry by the Council." Under Article 15 disputes not submitted to arbitration or judicial settlement are to be submitted to the Council by notice from either party to the Secretary-General, and "the Council shall endeavor to effect a settlement". This was conciliation, assuredly, but conciliation by an executive rather than a semi-judicial organ. The Scandinavians sought the creation of an organ of the latter kind.

[32] Great Britain, Parl. Pap., *Correspondence relating to the North Sea Incident* [Russia No. 2 (1905), Cd. 2350]; Carnegie Endowment for International Peace, *Hague Court Reports*, p. 403.

[33] The phrase originated with the English group, headed by Lord Bryce, which was studying the question in 1914-15. The printed memorandum of that group was before the American group on March 30, 1915, at its third dinner at the Century Club, New York, where both the idea and phrase were embodied in the program, later adopted at Philadelphia, June 17, 1915, as that of the League to Enforce Peace, American Branch (Theodore Marburg, *League of Nations: A Chapter in the History of the Movement*, pp. 43, 57, 133).

Conciliation was, however, not new in the nomenclature of pacific settlement, having been used in Latin America as a distinct form in treaty stipulations since 1822.

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Now the jurisdiction of the Council had been very carefully considered when the Covenant was made. The war studies of the problem had boiled down to a conclusion that to prevent war there must be set up a jurisdiction capable of solving matters not wholly legal in character but bound up with state policies. The hodge-podge of factors divulged by the results of the assassination at Sarajevo were much in mind and the aim of plan-makers was to provide a forum able to weigh such matters of conflicting policy, innately responsible enough to deal with them and sufficiently authoritative to secure respect for conclusions which might produce a deviation of national policy. The Council met the requirements and its jurisdiction over disputes was intended to provide a forum for the "political" disputes out of which war was believed to spring. This reasoning was definitely accepted by the League of Nations Commission of the Preliminary Peace Conference. The draft laid before the Commission at its first meeting contained the provision:

> The high contracting parties agree that, should disputes arise between them which can not be adjusted by the ordinary processes of diplomacy, they will in no case resort to armed force without previously submitting the questions and matters involved either to arbitration or to inquiry by the Executive Council.[34]

The jurisdiction of the Council as thus conceived from the outset became a reality in the Covenant which the Scandinavians desired to amend in 1920. Along with other proposed amendments, their drafts were referred to a Committee on Amendments to the Covenant, which reported in 1921. On September 22, 1922, the Assembly gave the collective answer to the Scandinavian proposal in the form of a resolution on "the procedure of conciliation."[35] The essential decision of the Assembly was that conciliation should be developed by

[34] Miller, *op. cit.*, II, p. 234 (Art. 10); also compare pp. 3 (Art. 1^{a}), 74 (Art. V), 138 (Art. IX), 147 (Art. V), 239 (Art. $4^{(2)}$), 249 (Art. 10).

[35] *Resolutions and Recommendations adopted by the Assembly, 1922*, 9 (League of Nations, *Official Journal*, Spec. Sup. No. 9).

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Members of the League through the conclusion of conventions with the object of bringing their disputes before "commissions formed by themselves." The organization, competence and procedure of these commissions should "be freely determined by the contracting parties." Nine procedural articles were attached, setting forth the rules recommended for adoption. It was recognized that the Council might invite Members to use commissions established by themselves or refer to a commission "any dispute which may have been submitted to it by one of the parties by virtue of Article 15 [or Article 17] of the Covenant."

The Members of the League thus brought the conciliation commission into articulation with the general system of pacific settlement under construction. They facilitated the bilateral adoption of the method by providing a standard set of rules for insertion in treaties, thus emphasizing the principle of the Covenant that states are bound to adjudicate their disputes but that the method they employ is entirely within their own discretion. In the Assembly's resolution the hope was expressed "that the competence of conciliation commissions will extend to the greatest possible number of disputes". This counsel may not improperly be interpreted as a recognition of the fact that the value of conciliation is its universal applicability. Finally the Assembly expressed the hope "that the practical application of particular conventions between states, as recommended in the present resolution, will, in the near future, make possible the establishment of a general convention open to the adhesion of all states."

This desire met a response which opened the way to a new improvement. From 1923 to 1931 the writer's records show 187 bilateral treaties meeting the stated conditions.[86] They have been of particular value in enabling states with really conflicting policies to devise formulas of pacific settlement corresponding to the new trend toward adopting methods of pacific settlement coextensive with the former applicability of the war system. The advice of the Assembly further played

[86] By years, 1923, 3; 1924, 12; 1925, 20; 1926, 28; 1927, 15; 1928, 36; 1929, 45; 1930, 23; 1931 (incomplete), 5.

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in with a natural psychology of innocent — even healthy — particularism. States having agreed to leave all disputes to pacific settlement before resorting to war, promptly saw that their position was at least more comfortable if they should be able, in case of need, to use a jurisdiction of their own creation for solving their difficulties when diplomatic resources were exhausted. Philosophically it is a toss-up whether a foreign office ought to regard the necessity of calling on universal or general machinery to solve its dispute with chagrin or with satisfaction. The invocation of conciliation seems to imply failure on the part of officials to exhibit sufficient ability or ingenuity — an implication likely to be felt more strongly before than after the invocation. (After submission, the state's loyalty to pacific settlement gives a self-evident satisfaction.) At any rate, many states believed it desirable to develop for themselves well-rounded formulas for the bilateral settlement of whatever disputes might arise. The standard procedure recommended by the Assembly invited and encouraged that development.[37]

A minor improvement, perhaps of procedure, came from the resolution of 1922. All conciliation conventions include as an essential provision the idea that the commission of five members should be appointed in advance and should be continuously in being, so that there will be neither friction in selecting commissioners nor delay in their performing their functions if a task arises for them. This provision is one of the primary stipulations of the type, and a failure to keep the commissions full is technically a violation of the treaty's terms. Before 1922 carelessness on this point prevailed in foreign offices.[38] Conventions made in response to the 1922 resolution have customarily provided for reporting to the Secretary-General

[37] The interpretation is prompted by an extensive study of available records exhibiting the attitude of states.

[38] Prior to 1928 the United States was very lax in this respect. Since then its appointments to commissions have been made promptly and replacements filled. Other states have not become so sensitive to this form of treaty violation and in consequence many commissions under treaties not in the League system are incomplete.

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of the League the names of the commissioners appointed under them.[39]

Locarno and Its Antecedents

In 1923 the lines of international thought concerning pacific settlement and armament became inextricably entangled, and development since then has resulted from the attempts to unravel the skein. The study of "the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations", recognized by Article 8 of the League Covenant as requisite for the maintenance of peace, was first intrusted to the Temporary Mixed Commission for the Reduction of Armaments, which was deliberately given a majority of civilian members. In 1922, at its inspiration, the Assembly[40] recorded that "moral disarmament is an essential preliminary condition of material disarmament"; it required "an atmosphere of mutual confidence and security", for which regional agreements were recommended. In 1923 the commission presented to the Assembly a Draft Treaty of Mutual Assistance intended to carry out this lead, and included a definition of aggression—the *casus fœderis*—based upon failure to accept prior awards or decisions of pacific settlement machinery. The draft[41] was circulated to states and brought back replies which caused pessimism before they were thoroughly digested. Altogether eighteen states found the draft acceptable,[42] but

[39] See the reports in *Official Journal*, VI, pp. 1684, 1685, 1727; VII, pp. 378-381, 660, 1139, 1529, 1644; VIII, pp. 625, 1043, 1552, 1652; IX, pp. 295, 296, 707, 797, 1142, 1143, 1952; X, pp. 794, 795, 1841; XI, pp. 267, 385, 1084, 1785; XII, pp. 578, 720, 784, 595, 1774.

[40] *Resolutions and Recommendations adopted by the Assembly . . . 1922*, p. 27. The quotation is from No. XVI of the resolution of September 27, 1922.

[41] As emanating from the Third Committee, *Official Journal*, IV, p. 1521. It was built to the idea "that aggressive war is an international crime" and the parties would "undertake that no one of them will be guilty of its commission." It had previously been the subject of replies from 28 governments (*ibid.*, pp. 175, 431, 722, 1074, 1135).

[42] *Ibid.*, V, pp. 453, 751, 1035, 1158, 1689. The replies of 28 governments are collected in *Records of the Fifth Assembly, Minutes of the Third Committee*, p. 129.

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others in effect emphasized that the project had overlooked the essential relation that should exist between the development of methods of pacific settlement and the actual requirements of security.

Meanwhile the business of setting the world to rights in the presence of the ambitions of victors and the rights of the vanquished had come to a full stop in the reparation crisis. Political ineptitude having given way to economic expertness, the Experts' (Dawes) Plan was produced and in August, 1924, the governments concerned met in conference at London to accept and implement it. The latter necessity meant provision for many details that touched the parties on the raw. In a preliminary conversation with Premier MacDonald of the United Kingdom, Premier Herriot of France asserted that "he would not have done his duty toward his country if he did not render Germany incapable of doing harm"; and also that "he would prefer that France should not be paid if she must give up her security." [43] The crucial detail was whether a German default would be determined by a majority vote or unanimously. I quote the interlocutors: [44]

> M. HERRIOT: It is difficult to admit that the vote of a single nation, less interested than others in reparation, might block everything.
>
> MR. MACDONALD: We could say in advance that, if difficulties occur, we shall find their solution by submitting them to an international court which would determine in accordance with its own rules whether it would decide by majority or not. The effect would be the same as submitting the affair to arbitration. If the decision is against me, I nevertheless yield. That is especially so if the court has a strictly judicial character, but a simple majority by a political organ could not be accepted.

Following that line of thought and applying the principle

[43] See Myers, *Reparation*, Part VI, at p. 227 (*World Peace Foundation Pamphlets*, VIII, Nos. 5-6). The whole passage there quoted covering the conversations at Chequers Court, June 21-22, 1924, is illuminating.

[44] For this and the preceding quotations see Georges Suarez, "Une Nuit chez Cromwell", *La Revue de France*, January 15, 1929. Minutes of the conversations were originally published in *L'Éclair*, December 27, 1924, and reprinted in the London *Times* and *Le Temps*, among others.

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of leaving potential differences to arbitration, the final protocol of August 16 and the annexed agreements provided for nineteen separate arbitral jurisdictions,[45] each carefully adjusted to perform the specific function which might be required of it. The principal one, the Tribunal of Interpretation between the creditor states or the Reparation Commission and Germany, was continued to cover the entire system of the New Plan of January 20, 1930. The policy thus set up went into force on August 31, 1924.

On September 6, 1924, the Assembly of the League, following eloquent speeches by Herriot and MacDonald respecting what they had learned at London and what they conceived to be the right line of progress, adopted a resolution consecrating the formula "arbitration, security, disarmament" as the future program of work.[46] Two committees of the Assembly in almost religious fervor produced the Geneva protocol for the pacific settlement of international disputes of October 2, 1924, and it was voted in the same mood.[47] From its clauses closing the "fissures" in the Covenant to its provision for the disarmament conference, it was a complete picture of the mental attitude which states had then reached toward the problem. As an examination of the elements uppermost in the thoughts of statesmen and a summary of possibilities, it remains a landmark. In substance, it failed because its detailed provisions were held to be too rigid by certain states, notably Great Britain.[48]

[45] League of Nations, *Treaty Series,* XLI, p. 429; *Reparation,* Part VI, p. 236. The series of courts and jurisdictions is listed in the latter at p. 314.

[46] *Records of the Fifth Assembly, Plenary Meetings,* p. 77; *Resolutions and Recommendations adopted by the Assembly . . . 1924,* p. 47 (*Official Journal,* Spec. Sup. No. 21).

[47] The text is in *Records of the Fifth Assembly, Plenary Meetings,* p. 483; Myers, *Yearbook of the League of Nations,* 1925, p. 609.

[48] The British objection was based upon the contention that, "by closing certain gaps" in the Covenant and "by sharpening the 'sanctions', especially the economic sanctions", "the responsibilities already undertaken by the states Members of the League" would be increased. The fact that the United States and other powerful nations were not "within the circle of League membership" made it "most unwise to add to the liabilities already incurred without taking stock of the degree to which the machinery of the Covenant has already been weakened by the nonmembership of certain great states" (*Official Journal,* VI, pp. 446-447).

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When the British criticism of the protocol put a quietus on it in March, 1925, the critic recommended that "special arrangements in order to meet special needs" should be made for the "extreme cases" where "differences might lead to a renewal of strife."[49] On the previous February 9 Germany had made a proposal which that language exactly defined. After long negotiations the Locarno treaties were initialed on October 16, 1925, involving Germany, Belgium, France, Great Britain, Italy, Czechoslovakia and Poland.[50] A treaty of mutual guaranty[51] between the first five guaranteed the western frontier of Germany from attack or cross invasion by Germany, Belgium or France, which states further agreed to settle by peaceful means "all questions of every kind which may arise between them." Detailed provisions for procedure in case of violation were set down. Germany and each of the contracting limitrophe states made an arbitration treaty[52] which, leaving jurisdictions in all subsisting treaties in full effect, contemplates the submission of any disputes to a permanent conciliation commission. This jurisdiction is optional if the dispute is justiciable, especially as understood in Article 13 of the Covenant (or Article 36 of the Court Statute), and obligatory if it is not justiciable. Specifications as to submission to an arbitral tribunal or the Permanent Court are given, and it is generally admitted that no exceptions whatever are contained in the documents. In addition to the four arbitration treaties of Germany with Belgium, Czechoslovakia, France and Poland, all parties handed Germany a collective

[49] *Ibid.*, p. 450. The play of policy is interesting in this connection. Great Britain, which in 1925 advocated and thus made possible the regional agreements of Locarno, had previously objected to regional agreements. On the earlier occasion, however, such agreements were directed more at conditions involving subjective "security" than at definite instances of political tension.

[50] For the negotiations and the political conditions of the time as well as an interrelated summary of the decisions see Myers, *The Locarno Conference* (*World Peace Foundation Pamphlets*, IX, No. 1).

[51] League of Nations, *Treaty Series*, LIV, p. 289 *et seq.*; Myers, *op. cit.*, pp. 54-75.

[52] The documents with Belgium and France were named conventions, since the fundamental engagement of those states with Germany was in the overlying treaty of mutual guaranty.

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note respecting Article 16 of the Covenant. France made identic treaties with Czechoslovakia and Poland respecting aid and assistance, within the scope of the Covenant, in case of a (German) failure to observe the "undertakings arrived at this day", if such failure "is accompanied by an unprovoked recourse to arms." An off-stage consideration was support of German admission to the League as a great state. The whole system entered into force on September 14, 1926.

Disarmament and the General Act

The Locarno protocol with its eight accompanying documents was thus the second important application of the principles of pacific settlement to a problem of policy. The reparation application was technically only an extension of the compromisory clause to matters subjectively important to some of the parties. The Locarno application was far more striking and significant. Historically it suggests a certain comparison with the Anglo-French entente of 1903-04, in that this settled outstanding problems of policy and established future relations on a basis of arbitration. Locarno comprised more parties, more complex difficulties, deeper distrusts, but the negotiators were able to employ far superior machinery of pacific settlement. In 1926 Germany fully entered the existing system of pacific settlement, adding the Covenant and the optional clause of the Court Protocol to its other obligations. For the present purpose Locarno may be described as a revelation of the political potentialities of pacific methods: the possibility of employing existing methods of pacific settlement to eliminate both subjective and objective difficulties between states bound by substantial coöperative obligations (for Germany's acceptance of the Covenant was a *sine qua non*). In less well known instances the example has been followed several times since.[53]

[53] The Locarno arbitration treaties have been employed as models by Austria and Italy, Hungary and Rumania, Bulgaria and Czechoslovakia, Greece and Turkey; and since 1928 France and Italy have been intermittently negotiating to the same end.

France and Yugoslavia, Poland and Rumania have adopted the formula of the treaty of mutual guaranty in bilateral arrangements. It was also the prototype of the League models of 1928.

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Locarno made a deep impression upon the minds of statesmen and started a fresh examination of possibilities. Further study tended to confirm the soundness of the formula "arbitration, security, disarmament", which had since 1924 become a classic slogan. The difficulty of achieving disarmament without arbitration and security was all too clearly revealed by the preliminary labors of the Preparatory Commission, created by the League in 1925 to make straight the path of a future world disarmament conference. The Preparatory Commission started out by attempting to answer a questionnaire, and forthwith produced a multiplicity of baffling new questions.

In 1927 the Assembly's impatience for progress [54] found expression in resolutions declaring a new principle and in preparing a new attack on the peace problem. The declaratory resolution was to the effect: [55]

> (1) That all wars of aggression are, and shall always be, prohibited.
>
> (2) That every pacific means must be employed to settle all disputes, of every description, which may arise between states;
>
> The Assembly declares that the states Members of the League are under an obligation to conform to these principles.

The new attack was to divert attention from the armament phase of the trilogy, "arbitration, security, disarmament", and to set up within the Preparatory Commission for the Disarmament Conference a Committee on Arbitration and Security to explore the possibilities of those two elements.

[54] The League Assembly in 1925 asked for a survey of the situation, which was provided and revised the following year. In a valuable introduction the volume presents an analysis of arbitration and conciliation treaties in their technical aspects, which is virtually a manual of jurisdictional and procedural elements. In the second edition, revised up to December 15, 1927, the texts of 85 pacific settlement and 31 guaranty treaties are printed. In addition 200 compromisory clauses are tabulated. See *Arbitration and Security. Systematic Survey of the arbitration conventions and treaties of mutual security deposited with the League of Nations* (C. 653. M. 216. 1927. V. 29).

A more extensive volume will be issued in 1932.

[55] League of Nations, *Resolutions and Recommendations adopted by the Assembly . . . 1927*, p. 22. The resolution was introduced by Poland and adopted unanimously on September 24.

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The Assembly's committee [56] based its study on the Locarno agreements, which were "not in any way to be confused with such alliances as it was possible for countries to contract for political purposes of one kind of another before the Covenant of the League established general principles and obligations which introduced a measured harmony into international life." The systematic study of these subjects brought a series of texts, adapted to different objects,[57] before the Assembly in 1928. These model texts were:

Convention a—bilateral convention for the pacific settlement of all disputes;
Convention b—bilateral convention for judicial settlement, arbitration and conciliation;
Convention c—bilateral conciliation convention;
Treaty D—collective treaty of mutual assistance;
Treaty E—collective treaty of nonaggression;
Treaty F—bilateral treaty of nonaggression.

The major part of each of the six texts was a competent revision of the Locarno arbitration text with introductory jurisdictional articles for pacific settlement conventions, together with clauses adapted from the Locarno treaty of mutual guaranty defining the scope of the treaties of mutual assistance or nonaggression. Running from 33 to 37 articles over all, the six texts varied in from one to eight articles only.[58]

[56] League of Nations, *Records of the Eighth Assembly, Plenary Meetings*, p. 454; *Minutes of the Third Committee*, p. 81 (*Official Journal*, Spec. Sup. No. 54 and 57).

The Committee on Arbitration and Security held three sessions and the rapporteurs met once. See documents C. 667. M. 225. 1927. IX (1928. IX. 2); C. 165. M. 50. 1928. IX. 6; C. 358. M. 112. 1928. IX. 8; *Records of the Ninth Assembly, Plenary Meetings*, pp. 219, 328. In addition to its draft texts, the committee originated resolutions passed by the Ninth Assembly concerning good offices of the Council, the optional clause and Arts. 10, 11 and 16 of the Covenant (*Resolutions and Recommendations adopted by the Assembly . . . 1928*, pp. 16-18, *Official Journal*, Spec. Sup. No. 63).

[57] *Resolutions and Recommendations adopted by the Assembly . . . 1928*, pp. 26-57.

[58] The texts are comparatively consolidated in Myers, *Origin and Conclusion of the Paris Pact*, pp. 191-196.

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The Assembly thought this offering of a standard treaty for any national taste was too good not to be pushed farther. Following its habit of utilizing a committee as a subdiplomatic conference, the Assembly received from its Third Committee a "general act" for the pacific settlement of international disputes which codified the whole of the development. This document[59] consists of four chapters: conciliation, judicial settlement, arbitration and general provisions. The methods are each defined as to jurisdiction with relation to each other, followed by full procedural details including, of course, the Statute of the Court and a chapter of the Hague convention of 1907 by reference.[60] The scope of the jurisdiction is "all disputes" for which each method is applicable, "subject to any reservations which may be made under Article 39." Great care was taken in drafting Article 39 to identify categories of reservations, so that any exceptions could at least be classified[61] in an orderly manner. Further, accession might extend to all or certain chapters.[62]

The significance of the general act lies in several directions. It sets forth a standard set of articles that, with the six annexed special documents, makes negotiating bilateral treaties of pacific settlement, mutual assistance or nonaggression as simple and satisfactory as buying silver under the guaranty of sterling quality. It enables any state to enter into specialized multilateral engagements "in blank" without reservations, or, by making reservations, to retain particular questions for diplomatic or other transactions. It prevents,

[59] League of Nations, *Treaty Series,* XCIII, p. 343, Reg. No. 2123; *Resolutions, cit.,* p. 20; Myers, *op. cit.,* p. 182.

[60] Arts. 17 and 18 of the General Act.

[61] These may be reciprocal and relate to those disputes arising out of facts prior to accession, those solely within domestic jurisdiction and those concerning particular cases or clearly specified subject matters. Of the first eight accessions, only Belgium and Spain made a reservation (*Treaty Series,* XCIII, p. 345; C, p. 260), but the next ten all attached reservations.

[62] Norway, the Netherlands and Sweden originally omitted chap. iii, arbitration, in furtherance of an idea developed among the Scandinavian countries that the court's judicial function was preferable to the arbitral method. Subsequently, Norway acceded to the chapter in order to maintain flexibility of its multilateral engagements (*Treaty Series,* XCIII, p. 343; C, p. 260).

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where accepted, that great deterrent to the growth of a law of pacific settlement, divagations of language which unnecessarily deprive similar texts from having the same legal significance. In three years eighteen states had acceded to the general act,[63] while the Little Entente had enacted it as a tripartite treaty [64] and the standard articles were being generally used in bilateral treaties of pacific settlement.[65]

The Briand-Kellogg Pact

The general act was opened to accession on September 26, 1928. Just thirty days earlier, the treaty for the renunciation of war had been signed at Paris. Ever since Locarno Aristide Briand, the perennial foreign minister of France, had been making speeches about it, and its spiritual significance had boiled down in his eloquence into a formula [66] subsequently confirmed by the Assembly resolution of 1927. In proposing a bilateral treaty with the United States, on June 20, 1927,[67] he used the formula uppermost in his mind. Frank B. Kellogg as Secretary of State put the Briand formula into multilateral form and with rare devotion [68] brought negotiations to their

[63] Australia, Belgium, Canada, Denmark, Estonia, Finland, France, Great Britain, Greece, India, Irish Free State, Italy, Luxemburg, Netherlands, New Zealand, Norway, Spain, Sweden.

[64] League of Nations *Treaty Series,* XCVI, p. 311; Reg. No. 2210.

[65] For instance Hungary and Poland, November 30, 1928 (*Treaty Series,* C, p. 69); Hungary and Turkey, January 5, 1929 (C, p. 137); Czechoslovakia and Spain, November 16, 1928 (C, p. 313); Greece and Turkey, October 30, 1930 (*L'Europe Nouvelle,* December 20, 1930).

[66] M. Briand's message to the United States on the tenth anniversary of its entrance into the war asserted a willingness to subscribe "to any mutual engagement tending to outlaw war, to use an American expression", and his definition of European experience was: "The renunciation of war as an instrument of national policy is a conception already familiar to the signatories of the Covenant of the League of Nations and of the treaties of Locarno" (Myers, *op. cit.,* p. 34; James T. Shotwell, *War as an Instrument of National Policy,* pp. 41-42; French and English texts in *International Conciliation,* No. 243, p. 460). A prior use of this phrase was in his speech to the Chamber of Deputies on December 1, 1926, referring to Germany: "Elle renonce ainsi à régler par la force ses conflits avec ses voisins."

[67] Department of State, *The General Pact for Renunciation of War,* p. 4; Myers, *op. cit.,* p. 100.

[68] The record of the correspondence (*The General Pact for Renunciation of*

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consummation in the now famous pact. The pact entered into force on July 24, 1929.[69] By 1931 a total of 59 out of a possible 65 contractants [70] were bound by the following engagements, taken without limit of time: [71]

> Art. 1. The high contracting parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.
>
> Art. 2. The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

Whether or not that language means much, or anything, legally, has been largely discussed, without any certain con-

War) is only a portion of the evidence. Notes and explanatory statements were generally circulated by cable to all potentially interested governments with the result that virtually a multilateral conference was maintained by cable, perspicuously at the expense of routine business of the United States Government.

[69] The treaty is "open multilateral" but not universal in form. The signers and parties are fifteen, being the great states, their associated dominions, and the Locarno contractants. All the rest of the world was invited in after the signing and without a hand in the negotiation. Argentina and Brazil had too much prestige to permit immediate adhesion.

[70] Department of State, *Treaty Information Bulletin* No. 7, p. 7; No. 14, p. 5. The treaty was in force on April 1, 1931, between the following: Afghanistan, Albania, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Danzig, Denmark, Dominican Republic, Egypt, Estonia, Ethiopia, Finland, France, Germany, Great Britain, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Irish Free State, Italy, Japan, Latvia, Liberia, Lithuania, Luxemburg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Persia, Peru, Poland, Portugal, Rumania, Siam, South Africa, Soviet Union, Spain, Sweden, Switzerland, Turkey, United States, Venezuela, Yugoslavia.

The Moscow protocol of February 9, 1929, between Estonia, Latvia, Poland, Rumania and the Soviet Union provided for its immediate entry into force between them (League of Nations, *Treaty Series,* LXXXIX, p. 369; Reg. No. 2028). Danzig acceded to both (*Official Journal,* X, p. 1274).

[71] League of Nations, *Treaty Series,* XCIV, p. 57; Reg. No. 2137.

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clusions.[72] Perhaps no conclusion is attainable, at least until there is prior agreement upon the subjective effect which the existence of the engagements will have upon policy. Some, like the writer, assume that the war which is condemned and renounced is war in the technical sense, "not the mere employment of force, but the existence of the legal condition of things in which rights are or may be prosecuted by force."[73] Others assume that it means, rather than forecasts, abolition of the use of force in international relations.[74] The unexpressed exception of "the natural right of self-defense" has been made much of on the apparent assumption that its exercise is necessarily synonymous with the war which is condemned;[75] but if all the parties to the treaty, having condemned war, renounce it as an instrument of policy and therefore fail to practice it, the need for self-defense eliminates itself. An agreed definition of war would obviously aid to clarify thought here.[76] On the other hand, action that could be called aggression, capable of producing a "natural right of self-defense," would be a deliberate violation of a solemn treaty, which is no mean

[72] The discussion in the United States has turned on the question of a "consultative pact", while in Geneva there have been debates on proposed amendments to the Covenant eliminating recognition of war (A. 8. 1930. V. and A. 85. 1930. V. 26).

[73] Moore, *Digest*, VII, p. 153.

[74] The treatment of "war" and "force" as synonymous terms pervades most of the discussion. This is undoubtedly salutary, especially since force without war invariably has been employed only when its user has power altogether out of proportion to that of the victim.

[75] Secretary Kellogg's comment to the American Society of International Law on April 28, 1928, quoted in his note of June 23, is the official gloss. He rightly says that defining self-defense raises the identical question of aggression "approached from the other side". He objected to mentioning it expressly since this would give the phrase "a juristic conception", and "it is far too easy for the unscrupulous to mold events to accord with an agreed definition". On the other hand, self-defense and its pole, aggression, are as easy to recognize as facts as they are difficult to define as terms.

[76] The actual practice makes the need one of reasoning rather than of procedure. The pressure to try a case before fighting it, inherent in the whole network of pacific settlement, and the established jurisdiction of the League Council at the point when a dispute is "likely to lead to a rupture", go far toward insuring that it is war in the embryo rather than declared war that will receive treatment.

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handicap. Such action would violate Article 2 as well as Article 1, and there is not a state in the world which would not presumptively also at the same time violate some additional treaty of pacific settlement besides.

The value of the treaty is, however, in its practical effect rather than its intrinsic meaning. Its language was directed at peoples more than at their creatures, governments, and people take their ideas in the broad sense. To them everywhere war is "outlawed," and every foreign office knows that foreign public opinion would be arrayed against a nation resorting to war. Beginning a war, under such circumstances, would be at least tantamount to inviting the rest of the world to assume toward one's adversary an attitude which used to be called "benevolent neutrality"—not to mention the possibility of sanctions.[77] No intelligent foreign office starts a war to lose it, even with a first-class *casus belli*. It seems clear, to the writer at least, that the treaty for renunciation of war will, when it is digested and metabolically assimilated into national policy, result in a considerable revaluation of the objectives and methods of interstate relations. For the present purpose, it may be conservatively suggested that at present it predisposes foreign offices and peoples against resort to war and puts a premium on the further development of pacific settlement.

One effect of this predisposition may be noted. When the optional clause of the protocol of signature of the Court Statute was adopted in 1920 it was desired by the small states and the big ones were willing they should have it. Big states from time immemorial had always agreed with the attitude once displayed by the United States in a declaration[78] that it was "unalterably opposed to the arbitration of any of its political acts"; but small states found judicial review a supplement to

[77] For the sake of simplification, all consideration of sanctions has been disregarded in this paper, as well as all other emergency methods, including the convention for financial assistance to states victims of aggression (League of Nations, *Resolutions and Recommendations adopted by the Assembly . . . 1930*, p. 24, *Official Journal*, Spec. Sup. No. 83).

[78] In a note to Colombia, February 15, 1913, *cf. supra*, p. 549, note 3.

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their military power and in any case had to confine their "political acts" to legal bounds. The compulsory jurisdiction of the Court, as it is accepted under the optional clause, is "held to exist when the Court may be made cognizant of a suit by unilateral application under an international agreement." [79] Up to the signing of the Briand-Kellogg treaty it had been accepted by 15 small states and Germany; by the beginning of 1931 it had been accepted by 37 states, big and little, with signatures awaiting ratification by 11 more. All the big states except Japan, the Soviet Union and the United States had subscribed. The limited [80] suability of states has become a standard, in active world development.

Expansion by the Compromisory Clause

Toward peace most people are introspective chameleons, coloring their views by their professional interests, their dispositions and personal experience. A healthful world, an educated world, one properly moral or economically stable, etc., etc., are prescribed as the means to the end by persons who are experts respecting those adjectival descriptions. As a matter of fact, peace is a process, resulting from the proper adjustment of society and its institutions and insured by the existence of appropriate mechanisms for handling emergencies of conflict. Peace is dynamic. It is a going system which must be continuously modified to meet new stresses and strains. The task, then, is one of social engineering, and its successful performance requires a kit of tools, the implements of pacific settlement, designed to cope with any friction or fracture that may occur. The evolution of these implements has been sketched here. But one naturally asks whether such implements are strong enough, and flexible enough, to deal with all the innumerable political, economic, social and cultural rivalries which bring national egos into conflict.

If the postwar world is distinguished from its predecessor in one aspect more than another it is in the penetrating consciousness of interdependence and the concomitant emergence

[79] *Publications of the Permanent Court,* Series D, No. 5, p. 15.

[80] That is, to the defined justiciable matters of Art. 36 of the Statute.

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of almost every phase of modern civilization as an international, that is, multilateral, problem in some pressing degree. Aided by the recent system and habit of consultation and conference, states with problems, and sometimes even with half an idea, have brought matters into the international arena, and the production of multilateral conventions has enjoyed a boom market. The general result has been that a surprising number of interstate relations which formerly created, or which might create, friction have been the subject of formal conventions or have been routed through the machinery with that end in view. Whether conscious, semiconscious or subconscious, it is a process of social engineering, patently eliminating potential or actual friction between states by substitution of orderly procedures specially adjusted to each problem in hand.

To the writer this wholesale concentration of the world upon reconstructing its objective relations is the most significant phenomenon of the present time. It is almost infinitely extending the rules of reasoned agreement to the relations of states and cannot but influence deeply the entire social structure. The classic prewar assumptions of insoluble problems between states are being obliterated on every hand, in both kind and degree. The transformation is in itself a distinct buttress of, and an addition to, the postwar pacific settlement system. But there is one common detail of the multifarious international conventions to which special attention should be called here.

The "compromisory clause" is referred to. It has existed from the earliest times of which we have record [81] and was until two generations ago at most the only form of conventional obligatory arbitration.[82] In the nineteenth century many compromisory clauses were of general application and in effect were what are now negotiated separately as general arbitration treaties.[83] In the twentieth century it has become

[81] Jackson H. Ralston, *op. cit.*, p. 49.

[82] *Cf.* Woolsey, *International Law*, § 227.

[83] The attempt to enact "obligatory arbitration" at The Hague in 1907 consisted of a project to apply the compromisory clause to multilateral conventions (Myers, *Arbitration in the Americas*, pp. 196-203; *Deuxième Con-*

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customary to identify the compromisory clause as a treaty article which provides that disputes arising from the interpretation or application of the stipulations of the treaty itself shall be submitted to arbitration. The proposition is so obvious that, like happy peoples, it has no history. States may have been unwilling to subject all their acts to review, but if their good faith were reasonably healthy and the treaty agreeable to them, there always was the minimum of objection to providing for an arbitral review of action under the specific contract. Before the war compromisory clauses were about as numerous as general arbitration treaties, on which attention was long centered.

The universality of the postwar principle of submitting a dispute to pacific settlement before resort to war and the tendency of states to apply that general obligation magnified the value of the compromisory clause. In one form and another it occurs many times in the peace treaties, often in its normal function and frequently as a means of getting an essential formula of agreement without expanding details and at the same time without running the risk of opening a whole problem anew.[84]. The jurisdiction of the Permanent Court of International Justice was so defined as to include that conferred by "all treaties and conventions in force." In anticipation of such jurisdiction, mandates, minority and other treaties had already provided for the reference of disputes under them to the court. Altogether, up to 1931 nearly 350

férence de la Paix, II, pp. 404-439, 443, 548, 43-121, 136-139, 165-177, 194-206; I, pp. 338-342, 455-562). Art. 16 of the Hague Convention of 1899 had previously identified the interpretation or application of a treaty as arbitrable.

[84] In the treaty of Versailles may be cited the series of Mixed Arbitral Tribunals (Part X, Annex VI) for deciding private claims as to contracts, prescriptions and judgments, property, rights and interests; jurisdiction respecting Saar mines transport [III, sec. IV, Ann. I (8)], reparation [VIII, sec. I, Ann. II (10) and Ann. III (6)], navigation [XII, Arts. 339, 357, 358]. The Permanent Court is used in 13 instances—Part III, sec. IV (22), Arts. 65, 289, 336, 337, 353, 376, 386, 415, 416, 417, 418 and 423 (*Publications of the Permanent Court,* Series D, No. 5, p. 83 *et seq.*). The Council of the League is intrusted with various duties, chiefly conciliatory, under Arts. 48, 49, 50 (Annex 16-18, 34-40), 80, 88, 102, 103, 164, 213, 257, 280, 304, 312, 320, 324, 338, 342, 377, 378, 379 (Myers, *Three Months of the League of Nations,* App. III, in *World Peace Foundation Pamphlets,* III, Nos. 1-2).

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treaties contained provisions in the nature of compromisory clauses conferring jurisdiction as to their interpretation or application upon the court.[85] Nearly as many more such clauses, in force, set up or stipulated other jurisdictions to the same end, usually specifying bilateral pacific settlement treaties.

The insertion of the clause in bilateral treaties is spontaneous or a matter of habit, except in a few instances where it is required by the national constitution, as in Brazil, the Dominican Republic, Portugal, Spain, Uruguay and Venezuela.[86] Due to the momentum of pacific settlement, the use of the clause has become standard equipment in the bilateral treaties of many states.[87] In the first 100 volumes of the League of Nations *Treaty Series,* there were 375 compromisory clauses of all types in 2,314 treaties.[88] The rapid growth of the practice of inserting the clause and its extension to categories of treaties can be illustrated by a reminiscence. In 1926 an inquiry whether the clause was ever used in treaties of commerce was answered by citing two instances; but in 1930 half the treaties of commerce registered at Geneva contained the clause.

The use of the compromisory clause, or the assignment in advance of a jurisdiction for disputes, has been international practice for multilateral conventions since the Great War.[89] The logic of the practice requires no explanation; but it significantly extends the fundamental purpose of the conventions by removing specific fields of international friction out of the range of controversy between states, for the clause insures

[85] *Publications of the Permanent Court,* Series D, No. 6; E, Nos. 3-6, chap. x.

[86] Myers, *Arbitration in the Americas.*

[87] Many minor agreements, such as parcel-post conventions or exchanges of notes for repatriation of insane persons, do not need the provision at all. General treaties of pacific settlement, of course, cover disputes arising from any other treaties between the parties, whether or not the compromisory clause is inserted in them.

[88] A preliminary list is printed in League of Nations, *Arbitration and Security,* p. 427 (C. 653. M. 216. 1927. V. 29).

[89] The Second Hague Conference tried but failed to establish a convention in this sense; see its *Actes* under "Arbitration obligatoire", Hull, *op. cit.,* p. 331; Myers, *op. cit.,* p. 196; Scott, *op. cit.,* I, pp. 319-385.

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judicial review of differences arising under the agreement. Judgments rendered in such differences may become glosses to the original text and may promote further agreement. In ten years this practice was followed in the case of some 75 multilateral conventions on as many subjects, the Permanent Court being designated as the forum of review in most instances.

Technical Jurisdictions

Independently and from the elaboration of these multilateral clauses has arisen what amounts to a subsidiary system of pacific settlement which in its various forms is making it possible to confine the inevitable frictions of civilization within their respective technical fields. When the disputes arising from the multifariously technical contacts of nations are wrapped up in national prestige, they may become weighty enough to create dangerous tension. Using such tension as a springboard with which to reach illegitimate aims used to be called "high politics". Most, however, of the realities in the modern world are beyond the range of understanding of the members of political governments, who everywhere are intrusting the governmental management of civilization to technical bureaus and "independent offices."[90] The "old diplomacy" fell down more from the lack of such a devolution than from original sin. In the postwar period international relations have been able to follow the earlier lead of national governments and to add technical bureaus to the necessary political organs.

Before the war the international bureau or commission was given so little scope that arbitration was scarcely necessary, for the conventions carefully reserved to the full discretion of the contractants any matter not specifically agreed upon. The Universal Postal Union, an association of postal administrations rather than governments, had and has its arbitral juris-

[90] A total of 492 boards, commissions, committees, joint committees, international commissions, conferences, etc., and missions were created by the United States from September 14, 1901, to March 4, 1929. The international commissions, conferences, etc., numbered 34 (*Sen. Doc.* No. 174, 71st Cong., 2d sess., at p. 132).

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diction, which extends to all postal conventional matters automatically;[91] the Universal Telegraphic Union has a compromisory clause in the 1906 and 1912 conventions on wireless;[92] but besides these there is practically nothing of prewar vintage. Yet the principle of the thing was obvious and it has been applied from the peace treaties onward.

The first development of special technical jurisdiction was in the charter of the International Labor Organization, the earliest autonomous affiliate of the League of Nations. The Organization is a full-fledged institution for the exploration of social progress, producing at its apex consolidated standards of improved practice in the form of "draft conventions" which may be assimilated to national legislation or enacted as international engagements. In the latter case the treaty provisions (Articles 411-420) set up a system for handling complaints in case any Member is not satisfied that another " is securing effective observance of any convention which both have ratified." The Governing Body of the International Labor Office undertakes a conciliatory procedure and may remit the question to a commission of inquiry, appointed *ad hoc;* and if the result is not acceptable the complaint may then reach the Permanent Court.[93] The court has a Chamber for Labor Cases of five judges in constant appointment, and to assist them each member state of the Organization may appoint four assessors representative of the government, employer and worker interests of which all bodies of the Organization consist.[94]

[91] Art. 10 of the main convention of 1924 is in League of Nations, *Treaty Series,* XL, p. 37. The convention of June 28, 1929, is Reg. No. 2368. It covers all subsidiary agreements. For its origin see John F. Sly, *Genesis of the Universal Postal Union,* pp. 409-11 (*International Conciliation,* No. 233). For an instance of such arbitration, Manley O. Hudson, *American Journal of Int. Law,* XX, p. 534.

[92] Art. 18 of Nov. 3, 1906, Malloy, *Treaties, Conventions, etc.,* III, p. 2893; Art. 18 of July 5, 1912, *ibid.,* III, p. 3053.

[93] The system has not been operated.

[94] *Publications of the Permanent Court,* Series E, chap. i. The inactivity of this chamber led to suggesting the Court's chamber of summary procedure as an optional alternative when the Statute was revised in 1929—*Committee of Jurists on the Statute . . . Minutes,* pp. 46, 52, 113 (League of Nations, C. 166. M. 66. 1929. V. 5).

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The second of these technical or functional subsystems is in the League's Organization for Communication and Transit, a field of the highest complication. Duties assigned to the League under Article 23(*e*) of the Covenant were intrusted to this "organization" by the Assembly of 1920. The organization consists of a special technical committee—in this case composed of government representatives sitting as experts without instructions [95]—and a periodic conference, both being assisted by a section of the Secretariat. To the committee falls the task of dealing with disputes as to interpretation of application of the communications and transit parts of the peace treaties, the rôle of conciliation in disputes arising out of any conventions produced by the series of conferences, and the function of rendering advisory opinions in disputes submitted to it by agreement between states. The Permanent Court maintains under its Statute a special Chamber for Communications and Transit Cases. This subsystem has had a number of disputes submitted to it [96] and in three instances the inquiry brought the difference to a point where the disputants were able to take it to the Permanent Court. In these three instances the controversies were on questions concerning the territorial extent of the jurisdiction of the International Oder Commission, the jurisdiction of the European Danube Commission between Galatz and Braila, and a railway phase of the Polish-Lithuanian dispute.

The League's Health Organization and the Economic and Financial Organization (with its included Economic Organization) have less definite but no less real subsystems of pacific settlement in their respective fields.[97] The number

[95] *Third General Conference on Communications and Transit. Records and Texts,* IV, p. 62 (Arts. 13-18) [C. 588(c). M. 200(c). 1927. VIII. 15/iv].

[96] See summary and selected references, Myers, *Handbook of the League of Nations since 1920,* pp. 118-121. The Council's reference of the communications problem in the Polish-Lithuanian dispute to the Organization is politically the most important instance of the use of this system (*Official Journal,* X, p. 45; XI, p. 1502, and C. 386. M. 170. 1930. VIII. 9).

[97] The compromisory clause in the nine sanitary conventions resulting from the European Health Conference, 1922, confer such jurisdiction on the Health Organization (Myers, *op. cit.,* p. 126). The convention on import and export prohibitions and restrictions of 1927 (League of Nations, *Treaty Series,*

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of these subsystems tends to increase, as a mere matter of orderly development. It may be ventured that any subject matter of public relations which is intrusted to multilateral action for solution will be covered in the end by a compromisory clause, if its consideration results in a written agreement. That is, of course, only a byproduct of the rapidly expanding practice of examining the diverse fields of international relations in their own terms, instead of trying to pass all of them through the bottle-neck of inexpert "political" consideration. From the point of view of pacific settlement, this utilization of expert organs is a development of international prophylaxis which in the long run must prevent many disputes from being born. In the process of constantly adjusting the mechanism of international relations to current conditions and confining the frictions of operation within their own technical areas by the interposition of pacific settlement as an eventual adjusting apparatus, there exists at least a method of isolating specific difficulties from the general political relations of states. Elihu Root [98] once wisely asserted that the greatest cause of war was "the suspicion of injustice, threatened and intended", which arises from "bitterness of feeling, dependent in no degree whatever upon substantial questions of difference." It is exactly from these technical fields of international relations that the insubstantial questions came which served to develop and influence exasperated feelings. The developments described are calculated to eliminate the conditions of irritation from which such bitterness of feeling emanated and to prevent the conjunction of such an incipient bitterness with differences that could act as a fuse to set off the charge.

XCVII, p. 391, Reg. No. 2238) in Arts. 8-9 establishes a system of reference to the Economic Committee; the convention on unification of economic statistics provides for a committee of technical experts with jurisdiction over disputes (League of Nations, Reg. No. 2560; *Official Journal*, X, p. 1892). The "League loans", affecting Austria, Bulgaria, Danzig, Estonia, Greece and Hungary, contain compromisory clauses designating the Council or the Financial Committee (*Treaty Series*, XII, p. 385; XXV, p. 423; XXX, p. 414; LVIII, p. 245).

[98] *The Causes of War*, pp. 5-6 (*International Conciliation*, No. 18, May, 1909).

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Character of Council's Jurisdiction

Finally, the function of legal machinery in the political jurisdiction of the Council of the League may be mentioned. It is never safe to assert that a war was prevented, for no one can be sure that any set of circumstances would certainly have resulted in war if the particular treatment given them had not been applied. Nevertheless, it is highly probable that the crises most likely to produce war, crises which have not been eliminated by the propyhlactic processes dealt with above, will, at the acute stage, come to the cognizance of the Council. Questions of almost every character are within the scope of its machinery, but there is one general type which can elude it. I refer to conflicts of legal rights, particularly instances where a situation recognizably unjust has been defined in a perfectly legal treaty.[99] There are a number of such combinations of vested rights on the one side and a developing sense of injustice on the other. The inevitable attrition of time on the *status quo* will certainly take care of some of them.

It is the dispute combined of political, legal and factual elements which is most likely in the future to suggest the possibility of war and to fall to the League Council out of the choice of jurisdictions, if and when it becomes "likely to lead to a rupture." The Council's procedure has been kept deliberately elastic, but in ten years certain characteristics have become evident in it. One is its tendency to remit the case to the disputants; a crucial or tender point having been decided, the parties are invited to negotiate again on the subject matter as thus altered. Another is the time advantage; having taken action to prevent the situation from deteriorating, it can be left until the next meeting, with the parties striving to reach a settlement in the interval. Ordinarily the Council has not exercised its right to take a decision without

[99] Both Germany and Poland have officially stated that they do not regard war as an appropriate solution of the "corridor" situation (*cf.* League of Nations, *Official Journal,* XII, pp. 178 and 174). Rumania and the Soviet Union during the negotiation of the Moscow protocol to the treaty for renunciation of war and subsequently formally accepted it as precluding resort to war for settlement of the Bessarabia question (Myers, *Origin and Conclusion of the Paris Pact,* pp. 72-74).

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the assent of the disputants; consequently its actions have really been the recorded conclusions of the parties, sanctioned by the Council as an organ of the whole League. Under these circumstances, it is possible to transform a *status quo* containing illegal, unlegal or unjust elements into something quite different, and with the consent of the parties. The Lithuanian-Polish dispute in connection with the "administrative line" is an illustration.[100] The process further facilitates breaking a dispute up into its component parts and handling them in order, with the aid of the available machinery. The Council may have disregarded mere technicalities of procedure in not changing its methods when acting under Article 11 of the Covenant instead of Article 15; that may worry the legalist, but it has proved to be wise. Considerable use has been made of expert commissions to determine facts or to investigate situations, with the object of affording a sound basis on which to frame constructive suggestions.[101]

The Council as a conciliatory body may lean in matters of law upon the Legal Section of the Secretariat, upon a committee of jurists or upon the Permanent Court through a request for an advisory opinion. The function of the Legal Section of the Secretariat corresponds to that of corporation counsel;[102] it provides the Council with legal data, drafts its papers, advises it on procedural matters, assures it that its resolutions are in proper form and do legally what they are intended to do in fact—functions continuous, unobtrusive and essential within their limits.

[100] In point are the Council's resolutions of December 10, 1927, December 14, 1928, September 18, 1930 and January 24, 1931 (*Official Journal,* IX, p. 144; X, p. 44; XI, p. 1501; XII, p. 239).

[101] The Commission of Rapporteurs on the Aaland Islands Question (*Minutes of 13th Session,* p. 158) and Committee of Inquiry on Origins of Greco-Bulgarian Frontier Incident (*Official Journal,* VII, p. 196) are instances.

[102] For an instance of the internal advice given by the Legal Section to another section of the Secretariat, in connection with a question of interpretation put to the latter, "à titre privé", see *Publications of the Permanent Court,* Series C, No. 18—I, p. 403.

The value of the Secretariat, which works for all Members of the League, and of the disinterested rapporteurs of the Council working in conjunction to arrive at a proper solution of a question, is usually lost to sight, but is one of the most useful features of the system.

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Committees of jurists are called in for the determination of legal points raised by the disputants and on which continuance of the procedure sometimes hinges. A good instance was the request of Greece for appointment by the Council of an arbitrator under Article 181 of the treaty of Neuilly owing to Greece's failure to agree with Bulgaria as to the protection of private rights in the transfer of territory. In the initial statements of the disputants, Bulgaria held that the particular issue did not fall under the article. In order not "to take responsibility as a judge", the *rapporteur* asked for the appointment of a committee of jurists to settle the point of competence.[103] The committee of jurists reported that the Council "should appoint an arbitrator in the present case, Bulgaria's right to contest the Greek Government's claim before this arbitrator, either in respect of receivability or the substance of the question, being duly reserved." The Council, "in view of the report", appointed the arbitrator.

The Council requests advisory opinions of the Permanent Court either *proprio motu,* or at the instigation or request of a state or international organization.[104] Until 1931 the second category accounted for thirteen advisory opinions, of which five were on behalf of the International Labor Organization, in effect interpretations of its statutory articles. The others determined interpretations of treaty rights which enabled states to proceed with the settlement of their problems with legal definiteness. The five advisory opinions requested by

[103] *Official Journal,* XI, pp. 1509, 1526, 1599, 1600. This incident is also an interesting illustration of the value of varied jurisdiction. Bulgaria had refused to submit the property claims involved to arbitration under compromis and had considered a plan of Greece to submit the matter to the Court under the optional clause "as an unfriendly act". The mixed arbitral tribunal under the treaty of Neuilly had declared the claims in question beyond its competence. Resort to Art. 181 of the treaty of Neuilly was thus the fourth effort to handle the difference as an international dispute.

[104] *Publications of the Permanent Court,* Series E, No. 1, p. 148; No. 6, p. 177.

On the desire of the International Labor Organization to secure the right to acquire the function of requesting advisory opinions under the compromisory clause of Art. 423 of its treaty pact, see *Committee of Jurists on the Statute . . . Minutes . . . March 11-19, 1929,* pp. 102, 135 (C. 166. M. 66. 1929. V. 5).

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the Council on its own motion have had this in common, that they involved the proper legal interpretation of a particular point in a dispute which the Council as an organ of the League was called upon to decide as a whole. While it is true that the Council can, does and should take policy, that is, political elements, into account in handling its dispute cases, it is not true that they are referred to the Court.[105] As indicated, disputes before the Council contain many factors, of which some are sure to be legal. For the most part, the legal phases of the matter provide their own answer by analysis, but on occasion a legal point may be obscure, uncertain or undetermined. Under such conditions, its definition should be by high judicial authority and its determination will constitute one of the facts on which the settlement of the question can be based. The function of the court in rendering advisory opinions requested by the Council *proprio motu*, then, is to contribute to the body of facts the consideration of which by the Council will provide a settlement of the issue before it.[106]

Bilateral Treaties

No mention has been made of a round 400 bilateral treaties which are currently in force. The great majority of these provide for the submission of all disputes to some form of pacific settlement. The United States accomplishes this effect by two treaties—of conciliation and arbitration—instead of one. Of the 160 treaties of prewar date, 60 provide an unlimited jurisdiction in terms. Practically all pacific settlement treaties negotiated since the war and currently in force are "all-in" treaties, any exceptions being to a specific type of pacific settlement rather to any pacific settlement at all. Since 1925 treaties have been made with increasing frequency in which no exceptions or reservations appear. Assuming that

[105] The Court, of course, has the free faculty of deciding whether the question submitted is judicially cognizable.

[106] The function of rendering advisory opinions is normal in courts under the Roman legal system and is frequent in code countries. It is also frequent in the Anglo-Saxon system, thirteen of the states of the United States employing some form of it (Manley O. Hudson, *The Advisory Opinions of the Permanent Court of International Justice*, pp. 351-366, in *International Conciliation*, No. 214).

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there are 64 states in the world which normally make treaties, it would take 2,016 bilateral pacific settlement instruments to complete the record. But those 64 states touch each other at common boundaries in only 250 instances. The 400 treaties, by actual analysis, cover fifty per cent of the cases in which a state could resort to war with an immediate neighbor. The multilateral engagements cover practically all those cases and thirty per cent more of the boundary tangencies besides.

Such is the modern system of pacific settlement machinery that has grown up since 1920. It is not coördinated. Its legal interrelations have not been analyzed. Its jurisdictional divisions are imperfectly defined. Its formulas have not become fixed. As a whole, it is an undigested phenomenon in international relations and law. Its implications as to state conduct have not been tested. But it is certain that foreign offices are more conscious of its implications than are the peoples they serve.

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GIOVANNI GARZONI ON THE OFFICE OF PRINCE

SINCE publication of the note on Giovanni Garzoni's treatise on ruling a city,[1] another brief political tract by him on the office of a prince has come to my attention. It occupies a manuscript on membrane with an illuminated title page and initial letters in the Urbino collection at the Vatican.[2] Since there are only twenty-one lines of writing to the wide-margined page and only about three to five words to a line, Garzoni's *Libellus de principis officio*, which covers twenty-five leaves, is about the same length as his *Libellus de regenda civitate*. Garzoni writes from Bologna as before. The present work is dedicated to Guido Ubaldi of Montefeltro, born in 1472, duke of Urbino from 1482 to 1508, and son of Federigo the famous condottiere, to praises of both of whom nearly one-fifth of Garzoni's space is devoted before he really begins the discussion of the princely office. However, while flattering Guido Ubaldo he has contrived to make the point that a prince should not merely excel in war but also in letters and philosophy.[3] The same point is reiterated later.

Whereas in his treatise on ruling a city Garzoni professed to follow the principles of the Peripatetics, in the present work he takes his stand upon Isocrates, Xenophon, and especially "that chief of the Academics", Plato,[4] whose advice that philosophers should rule

[1] POLITICAL SCIENCE QUARTERLY, vol. XLVI, pp. 277-280, June, 1931.

[2] Vatican Urbin. 996, membrane, 28 fols. of which the text occupies fols. 1r–25v. The dedication or prohemium begins at fol. 1r with the heading, "Illustrissimo principi Guidoni Ubaldo Monferetrio Urbini duci Ioannes Garco Bononiensis salutem dicit plurimam", and the incipit, "Eximia singularisque virtus tua effecit, princeps illustrissime, ut quem de principis officio conscripsi libellum tibi dedicandum curarem. . . ." After the close of this introduction the remainder of fol. 3r and fol. 3v are left blank, and fol. 4r is the illuminated title page, with the heading, "Ad illustrissimum principem Guidonem Ubaldum Monferetrium Urbini ducem libellus de principis officio per Ioannem Garzonem Bononiensem feliciter incipit", and the opening words, "Non mediocri fortasse admiratione adduceris, princeps magnanime, quod ego pusillus homo atque incognitus te hoc munere quamvis debili ornandum duxerim. . . ." Large illuminated initial letters occur at fols. 1r and 6r. The work ends at fol. 25v, ". . . quin pro his et omnes labores suscipiant et omnia pericula subeant." Frequent marginal headings accompany the text.

[3] *Ibid.*, fol. 2v.

[4] *Ibid.*, fol. v, "Sum autem Isocratem, Xenophontem atque ipsum Achademicorum principem secutus Platonem."

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is much to his taste.[5] He soon cites Aristotle, however.[6] Classical names and examples are prominent as in the other treatise. Even in speaking of the importance of upholding religion Garzoni gives only pagan instances of his generalization that all things eventuate prosperously for those who follow the *gods* and adversely for those who spurn them.[7] Only toward the very close of the work is lip homage paid to Christianity, the author referring to "the Gentiles who, though hampered by a false religion", thought that good rulers would be rewarded in the future life, and to "us who profess Christian truth."[8]

Yet our treatise maintains the medieval tradition of moral advice to the prince and of denunciation of tyranny. "The goodwill of the citizens is the best defense of empire."[9] The prince should treat his subjects well. Strangers, too, should be well treated. He should judge without favor. He ought to be munificent but not to exhaust the revenues. He should speak the truth, shun adulators, and punish calumniators. He should not act or speak hastily, and should combine urbanity and gravity according to time and place. Garzoni thinks, however, that it is very difficult for the same man to excel in both urbanity and gravity.[10]

But in the midst of these moral platitudes come glimpses of a different actual state of affairs. Well behaved citizens are not to be terrified and estranged.[11] Often the people confer most ample honors on their prince moved by fear rather than judgment.[12] Nothing is more unworthy than that private men should live a decent and moderate life, the prince an impure and shameful one.[13] He should not violate the wives or daughters of his subjects.[14] On the other hand, the prince must guard his life and not trust to mere

[5] *Ibid.*, fol. 7r–v.

[6] *Ibid.*, fol. 6r.

[7] *Ibid.*, fol. 10v, "Religio quanta existimanda sit vel hoc iudicio est quod omnia prospera eveniunt sequentibus deos adversa spernentibus."

[8] *Ibid.*, fol. 24v, "Omittamus gentiles qui quamquam falsa religione impedirentur eos tamen qui recte iusteque imperassent piorum sedes adepturos arbitrabantur. Nos qui christianam veritatem profitemur. . . ."

[9] *Ibid.*, fol. 6v, "Benivolentia civium optima est imperii defensio."

[10] *Ibid.*, fol. 18r, "Verum in utroque excellere difficilimum puto."

[11] *Ibid.*, fol. 13r.

[12] *Ibid.*, fol. 16v.

[13] *Ibid.*, fol. 17r.

[14] *Ibid.*, fol. 21v.

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popularity or the beneficence of his rule, since not all men are to be trusted.[15] And Garzoni would hang not only those who conspire against the prince but those who are cognizant of the plot and do not reveal it.[16]

This leads us to Garzoni's observations as to law and the administration of justice. As in the other treatise these are of some interest. He now refers to an oration which he had written on the utility of laws to states or cities,[17] by which he possibly means the *Libellus de regenda civitate* but which seems more likely to have been a third work on the praise of laws. The prince should devote time and thought to devising laws which will suit his city. If he cannot fulfill this function, he should follow in the footsteps of other cities which have the best laws.[18] As in the tract on ruling a city Garzoni advises judicial clemency. Offenders should not be punished too harshly, and the prince should deliberate long before he puts a man to death.[19] On the other hand, Garzoni advocates the death penalty not only for political conspirators but for counterfeiters, false measurers and forgers, and he praises Borso d'Este for his energetic measures against such criminals.[20]

While Guido and Federigo are praised for their military ability, the attitude to war is somewhat less favorable in the present treatise than in the *Libellus de regenda civitate*. War may often be avoided by taking counsel, and it is stupid to wage a war from which one either can derive no victory or one so slight that there is more detriment than emolument in it. He who has gained a vast empire by terror and carnage Garzoni deems less blest than the moderate possessor of a small domain.[21]

Finally may be noted some indications of conservatism and class-feeling on Garzoni's part. In distributing magistracies he would have the prince regard social position. It is a vicious and intolerable practice to prefer belt-makers and cobblers to knights and

[15] *Ibid.*, fol. 19v.

[16] *Ibid.*, fol. 22v.

[17] *Ibid.*, fol 9v, "Quantam utilitatem civitatibus leges afferant nos in ea oratione quam de ipsarum laudibus scripsimus planum fecimus."

[18] *Ibid.*, fol. 10r, "Danda est igitur a principe opera ut eas quae civitati conducunt leges excogitat. Quod munus si consequi non poterit aliarum civitatum quae optimis legibus institutae sunt sequetur vestigia."

[19] *Ibid.*, fol. 13r.

[20] *Ibid.*, fol. 23r.

[21] *Ibid.*, fol. 13v–14r.

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nobles in filling public offices. Garzoni further laments that we have fallen on times when persons of the lowest birth dare to vie with the nobility, to celebrate sumptuous banquets, clothe themselves in silk, and equip their horses right royally. Not only is such show unsuited to their persons, but they are often reduced thereby to beggary, resort to theft and crime, and end their days by being hanged or beheaded.[22] In another passage the prince is warned against those agitators who, although oppressed by misery and poverty themselves, promise others happiness and wealth.[23]

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[22] *Ibid.*, fols. 11r–12v.

[23] *Ibid.*, fol. 20v.

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ITALIAN ECONOMIC STATISTICS: A REPLY TO PROFESSOR SALVEMINI *

I HAVE just read the article by Professor Salvemini, "Mussolini's Battle of Wheat", published in the number of March, 1931, of your review. The author, basing his study largely on information and comments derived from my annual *Prospettive economiche*, ascribes to me opinions which I have never expressed and launches against me an accusation of cowardice which I must refute. I trust that you will publish in the next number of your review this rectification.

I proposed some corrections to the official figures regarding the cereal harvest in the years 1925 and 1926. When speaking of these corrections at page 30 of the above-mentioned number of your review, Professor Salvemini adds, "Many people will hesitate to believe it possible for a government of a civilized country to 'cook' its statistics." He transforms my opinion of a possible error in the official statistics into that of a deliberate alteration of them, thus completely falsifying it. Anyone who has some knowledge of economic statistics very well knows that in returns for agrarian and cattle-breeding production, generally based on estimates, and not on real and appropriate calculations, errors, often very serious ones, are inevitable. In the same volume mentioned by Salvemini (*Prospettive economiche*, 1928), where at page 41 a correction is proposed of 5 million *quintali* for the official returns of the harvest of wheat in Italy, at page 24 mention is made of a supposed error of 16 million *quintali* in the official figures of the United States; at pages 10 and 31 it is suggested that there may be errors of no slight importance in the official figures of the U. S. S. R.; at page 163 a doubt is expressed of an error of nearly a million *quintali* in

* This communication from Professor Giorgio Mortara, the distinguished Italian economist whose annual economic survey has been reviewed at some length in these pages (POLITICAL SCIENCE QUARTERLY, June, 1931, at page 317), is a reply to statements made by Professor Salvemini in a signed article on "Mussolini's Battle of Wheat", published in our issue for March, 1931, at page 25. In this controversy the policy of the POLITICAL SCIENCE QUARTERLY is in accord with the announcement printed on the inside of the front cover of every issue: The policy of the QUARTERLY is nonpartisan. Every article is signed and represents the personal views of the writer. In order to permit freedom of scientific discussion, the QUARTERLY refrains, as it has always refrained, from restricting contributors to the expression of opinions which could receive editorial endorsement.—ED.

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the official returns of the cotton yield in India; at page 229 is shown an error of about 800 thousand *quintali* in the official statistics of the wool yield in Australia, New Zealand and South Africa. These examples will suffice to demonstrate how absurd it is to describe statistics as "cooked" merely because a technical man has thought it possible to propose some corrections; at this rate *all* agrarian statistics *all the world over* would be "cooked", for there is not one of them exact.

With regard to the Italian statistics, I do not think that they are less reliable than those of other civilized countries. In my university teaching of statistics, I have used as a supplementary textbook for my students the *Annuario statistico italiano*, which is for Italy what the *Statistical Abstract* is for the United States. If I thought that the official Italian statistics were "cooked", I should be dishonest in feeding my students such adulterated food.

Again on page 30, Professor Salvemini attributes to me the merit of having corrected an error in the State Budget. The surplus left over in the year 1925-26 would not have been 2,268 million lire, as officially stated, but only 468 million, as discovered by me. The Budget Committee of the Chamber of Deputies, according to Professor Salvemini, accepted my correction, which later was embodied in the official statistics. A great triumph indeed for a humble professor in his study to be able to correct the public Budget! The truth is altogether different. Professor Salvemini cites my *Prospettive economiche*, 1928, page 465, but evidently he has not read what is printed there, namely: "The surplus of the year 1925-26 has risen to 2,268 million lire, but, of this sum, 1,800 million has been assigned to expenditures in favor of the economic reconstruction and the national defence, therefore the real surplus has been reduced to 468 million." There is nothing obscure and nothing criminal in this: *computatively*, the surplus was 2,268 million lire, *economically* it was reduced *after* to 468 million, because 1,800 were expended. I have registered the definitive economic result, not forgetting, however, to mention also the computative result.

Not satisfied with attributing to me statements which I have never made, Professor Salvemini allows himself to launch a serious accusation against me. On page 26 he writes: ". . . in Italy it is no longer safe to tell all the truth and nothing but the truth. A law . . . empowered the government to remove from office . . . any public official . . . who 'took up an attitude incompatible with the general political tendencies of the government'". Professor Ricci

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"was deprived of his chair for publishing a mild criticism of Mussolini's economic notions. To avoid a similar fate Mortara abstains from all criticism, to the point of leaving out the chapters on wages and general labor conditions."

I must express my surprise at the fact that the POLITICAL SCIENCE QUARTERLY has given hospitality in its pages to an accusation which tends to injure my honor as a scientist and a citizen. I repute it my duty to serve science and my country by seeking the truth and by divulging what seems to me to be the truth; and in the performance of this duty I have *never* allowed myself to be guided by considerations of personal benefit. Professor Salvemini's statement that I abstain from all criticism is false. The reader who attentively peruses my *Prospettive economiche* will find very little praise (which is useless) and much criticism (which may be useful) of the work of governments in general and of the Italian government in particular. It seems to me that an honest reader, instead of affirming that "Mortara abstains from all criticism" can declare that "Mortara abstains from all adulation." I abhor, in similar measure, systematic adulation and systematic opposition; and I think that a good citizen must always keep alive his critical sense, but endeavor to be always objective and serene in applying it.

As to the suppression of a few chapters (Professor Salvemini has forgotten to mention the one on "fruit and vegetables"—probably so as not to spoil his fantastic construction), this was done purely for technical reasons and not for political ones; on the other hand in the *Prospettive economiche* themselves and in other publications, I have freely expressed my opinion in the last years regarding matters concerning both labor and emigration, without any thunderbolt having pulverized me.

In conclusion it is a pleasure for me to remember that the number of June, 1931, of your QUARTERLY contains a review of my *Prospettive economiche*, concluding with the following opinion: "It should be emphasized that the author, uninfluenced in his scientific undertaking by such personal political convictions as he may hold, has produced an impartial survey of the Italian as well as of the world situation, so that this work, at the least, should be valued as a first-class reference book." It appears to me that in this opinion of a foreign and objective reviewer, we can imply a denial to the accusation which I have thought it my duty to refute.

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REVIEWS

Economic Rhythm. By ERNST WAGEMANN. Translated by D. H. Belloch.—New York, McGraw-Hill Book Company, Inc., 1930.—xvi, 287 pp. $3.00.

The statistical analysis of business cycles is a native American product. However, like potatoes and tobacco it has found the soil and climate of certain other countries quite as propitious as those of its native home. The last decade has seen a most extraordinary development in the cultivation of the field of business fluctuations in Germany. In considerable measure, the driving force back of this has been Professor Wagemann. As President of the Statistical Office of the German Reich he has been instrumental in improving the collection and publication of raw statistical data, as Director of the German Institute for Business Cycle Research he has been the leader in the analysis of this same material, and as Professor in the University of Berlin he has assured to the problem scholarly and scientific treatment.

Economic Rhythm is a translation of *Konjunkturlehre,* a study published two years before in Berlin by Dr. Wagemann. It is not a statistical treatise although it is full of statistics and graphs. It is an attempt to bring the results of many specific and delimited German studies into a general working hypothesis about the fluctuations of business. While one section does discuss methods of forecasting and explains in detail the German methods, the book is more than a summary of the studies published by the Institute for Business Cycle Research—it is an attempt to relate them to each other.

Certain interesting differences appear between the analysis of cycles in Europe and in America. In the first place, secular trends are regarded as of much less importance in Europe than in this country. This may be readily explained by the fact that not only is the rate of growth less rapid, but the dislocation resulting from the war makes difficult any attempt to determine a useful measure of trend in recent years. Furthermore, European economic organization is more diversified and more complicated. It is more subject to government interference and labor influence than in America. Everything is geographically more concentrated, and at the present

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time the various parts of the economic order are perhaps more closely interrelated. It is this extreme interdependence that brings Professor Wagemann to what he describes as the organic biological point of view. He describes the American methods as those of engineering, presupposing an interplay of forces virtually mechanical in character. The organic-biological point of view, however, insists that the economic system is a living organism with internal interdependence of its various functions. It is a closed, equilibrated, self-regulating system. Influences from outside cannot be related in any mathematical way; for they are but stimuli which set in operation forces in the economic organism itself. It follows from this that Professor Wagemann does not approve of forecasting by mechanical methods. He even believes that the reduction of business symptoms to three barometers, the Harvard method, has failed. Forecasting according to his way of thinking can be done only by a most comprehensive set of indicators. Even these quantitative measures will not prove entirely adequate but must be supplemented by qualitative knowledge concerning the character of business processes and the interplay of forces. The attack on "mechanical" forecasting appears most naturally in Europe, where business conditions are so largely subject to political policies, changes in tariff barriers, cartel organization, labor disputes and a host of other forms of interference, helpful or destructive to economic activity. The introduction of such considerations to the field of forecasting makes the problem of the business analyst much more difficult. His refined mathematical tools are of little use. History may prove of assistance, yet conditions of the past are never exactly reproduced. The picture may well cause the American forecaster to view his future task with some concern. It seems inevitable that types of interference, either voluntary on the part of the business man or inflicted by the government, will increase rapidly as we seek to control and improve the economic order.

Professor Wagemann uses the customary fourfold classification of economic fluctuations. He rearranges them, however, into discontinuous and continuous isolated changes, and periodical fluctuations taking the form of fixed rhythm and free rhythm. He defines business cycles as disturbances in the state of equilibrium which lead to a corresponding deviation in the opposite direction, or, in other words, proceed in accordance with the law of reaction. Such cycles, however, have no final or absolute character. Their character holds true only for a given form of economic organization; for the particu-

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lar reactions of phenomena vary considerably in character, according to the national economic system existing at the time.

For a book on business cycles, one finds the most amazing subjects included, from estimates of the German national income to mechanical illustrations of the flow of payments, and from whether the stock market ever draws financial capital away from the commodity market to a discussion of economic methodology. Some of the tentative and often guarded conclusions advanced on the basis of analysis of German data are as follows: Seasonal fluctuations often vary according to the phase of the cycle (p. 65). Long waves (50-year cycles) are observable only for money-volume series (p. 78). There will probably be a general tendency toward falling prices for some considerable time (p. 83). In recent years (since 1904), there has been no intimate connection between the cyclical fluctuations in industry and agriculture (p. 169). Imports are more subject to cyclical fluctuations than exports (p. 177). The rate of interest plays a secondary part in the cyclical process (p. 194). Since the war, there has been a tendency for prices and business conditions, particularly physical volume fluctuations, to move in opposite directions largely as the result of price-fixing policies (p. 200). Employment data constitute the best general index of the course of the business cycle (p. 222). The size of the American market and the immense capital wealth of the country are forces making for reduction in the degree of business fluctuations (p. 236). Of importance as methods of control, are credit policy, which remains virtually ineffective until it can direct the use to which credit is put, unemployment insurance which is usually conducted with a view to social rather than trade-cycle policy, and staggering construction which presents the difficulty of timing the financing without doing considerable harm. Of great importance is the development of business forecasting for private undertakings to supplement the national services (p. 238 *et seq.*)

Professor Wagemann has no single cycle theory to expound. He summarizes various hypotheses which have been espoused by others, and cautiously suggests an additional force (not as a sole cause) which arises from the structural differences among the various national economic systems. There is a persistent tendency, described as a "gravitational force", for labor to move from mature and semi-capitalist countries to the neo- or non-capitalist countries, and for capital to flow from mature capitalist to the neo- or semicapitalist communities. This flow inevitably stimulates activity in the lesser developed areas, making them more capable of absorbing industrial

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products, thus giving in turn to the mature capitalist countries an initial stimulus toward revival. When full prosperity is reached, the upward movement in the less developed nations is brought to a standstill, if for no other reason, because the increasing demand for money and labor in the mature nations would temporarily restrict the outward movement. No attempt is made to verify this hypothesis, though recent experiences would tend to disprove its immediate application. Migration restriction has become so general that the mobility of labor is greatly limited. Furthermore, since the war, the flow of capital to less developed areas has been greatest during periods of relative prosperity in the mature capitalist nations, and has virtually ceased during depression.

One beneficent result of the present depression has been to emphasize the international character of business fluctuations. The study of business cycles is now going on in skilled hands in every important country in the world. As. Dr. Mitchell suggests in his preface, this is a "type of international competition which enriches all parties". It is to be hoped that, as in the history of most periods of vigorous competition, the emphasis will shift to coöperative action, both among those who are endeavoring to throw light on economic processes, and those who are endeavoring to control the unruly behavior of our economic system.

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The Federal Trust Policy. By JOHN D. CLARK. Baltimore, The Johns Hopkins Press, 1931.—v, 305 pp. $2.75.

The main lines of Professor Clark's argument are that the federal policy of aiming at the preservation of competition by law was adopted by a few politicians, without the assistance of either business men or economic theorists; that the latter have contributed little to the development of policy; that the law has been interpreted broadly in accordance with the intentions of its framers, and that this policy "once ridiculed by the business and scientific world" (p. 270) is, in its main lines, "superior to any alternative policy" (p. 284).

The historical study of the development of policy (which occupies the major portion of the book) assembles much useful data and is new in its contention that the Sherman Law was not the outcome of any great public agitation concerning trusts. The principal pronouncements of economists are briefly summarized and Professor Clark does not disguise his scorn for what he regards as their lack

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of practicality. Although it must be admitted that the study of the subject has made shamefully small progress, in view of the place given in university curricula during the past two or three decades to "Trust and Corporation Problems", failure to endorse established policy is not to be confused with unpracticality. Professor Clark's contention that the economists offered no guidance in the formation of policy in 1890 when the Sherman Law was framed (p. 6) is rebutted by his own summary of articles on the subject in the early numbers of the academic journals in the late eighties (p. 80 *et seq.*) That federal policy has now won the support of "professional students of the problem" (p. 14) is, in his opinion, "strikingly demonstrated, not by the arguments of the special students, but by the comments of other economists. *Because they are not students of the trust problem they all the better represent the consensus of their professional brothers*" (p. 270, reviewer's italics.)

Professor Clark's own evaluation of this policy is contained in twenty-eight pages of the shallowest of special pleading concluding with the pronouncement that "the Sherman Law has withstood every challenge for forty years, not only because it is an example of that perfect legislation which adopts a policy midway between the extremes of public opinion. It lives because it exemplifies the American theory of individualism" (p. 298). He meets the contention that competition has in large part disappeared, in spite of federal control, with the statement that it exists "to a very considerable extent" (p. 273) and that the "most convincing proof" of its existence is the "earnest criticism of the law as too severe" (p. 279). The United States Steel Corporation cannot be a monopoly because its proportion of the business in steel-mill products has shown a downward trend, and, while the Corporation admittedly leads in making prices, the majority of purchasers are entirely satisfied. He agrees with the officials of the Corporation that the order to abandon the "Pittsburgh Plus" practice in selling such products was "wrong in economics and in law" (p. 187, note). His main argument that a policy of maintaining competition by law is most likely to secure the unquestioned benefits of progress (pp. 269, 283) is left unsupported by evidence.

Professor Clark attains his sharp simple conclusion by devoting space to demolishing such arguments as that the Sherman Law is responsible for trade depression and by avoiding the subtleties of the problem. He mentions hardly more than half a dozen law cases, classifies industrial conditions as either competitive or monopolistic,

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and avoids any discussion of the meaning of competition, or the significance of price leadership, the avoidance of price cutting and integration. The subject is in dire need of scientific study, but simple conclusions based on prejudice are no advance upon the discouraging revelation of complexity and the necessity for non-economic decisions upon matters of principle, that are the harvest of those who attempt to apply theoretical analysis to an adequate body of factual data.

ARTHUR ROBERT BURNS

COLUMBIA UNIVERSITY

The Economic Life of Soviet Russia. By CALVIN B. HOOVER. New York, The Macmillan Company, 1931.—viii, 361 pp. $3.00.

Professor Hoover has written four books in the compass of 347 pages. They make fascinating reading of unequal value. He attempts to describe the mechanism of the Soviet economy, to measure its accomplishment, to forecast its future and to give a balanced appraisal. If his book is judged not as a reference manual on the economic life of Soviet Russia in 1929-30 but as a series of impressions gained over some months of study, it ranks high and serves a useful purpose. Some of the chapters are straightforward description of a high order. Chapter ii on the organization of industry is an excellent presentation of a complex structure that does not lend itself easily to description. He discusses the functions of the various important agencies of control such as the Supreme Economic Council, the State Planning Commission, the Combinations and the Trusts. After tracing the evolution of these functions, he concludes with a significant contribution to the interpretation of Russia by recognizing a continuity of development in the last decade, and a high degree of stability in the basic structure today (pp. 41-42).

Chapter xii is an interesting combination of the four phases of the treatment and includes an excellent analysis of the incidence of the unplanned collectivization of farms on the Five Year Plan (p. 318). His final conclusion bears directly on the current discussions of planning in this country:

> Such success as has been achieved by the Plan so far is . . . due more to the ability to interfere authoritatively in the economy of the country and to take direct action to unravel an economic snarl which may have developed, rather than to the efficacy of planning as the term is usually understood. The estimates in the Plan and the Control Figures do not operate as limits but as goals which are to be exceeded wherever possible (p. 324).

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The chapters on labor and agriculture are typical of others in which there is more confusion of description and antagonistic criticism. There is much which is excellent, but it is so interlarded with personal reaction and evaluation that the chapters are essentially subjective. It is at these two points where the economic system touches human beings that there is a temptation to confuse description with running evaluation. It is hard to be objective about the fate of men and women. It is impossible in the brief compass of this review to analyze in detail. At one point, however, the method of presentation to which I take exception is found in a single sentence.

> So hard put to it to find families who might be classed as kulaki was many a village that anyone who had in times past, even before the Revolution, hired labour or loaned money or other goods, or who had been better off than the average peasant, was fastened upon by the village officials with relief *as a means of satisfying the incomprehensible sadism of their proletarian rulers* (p. 75).

The italics are mine. That clause has no place in a running objective description. Professor Hoover, however, is so outraged by the liquidation of the kulak that he can't write without invective. It is this atmosphere that makes me distrust the balance of Hoover's work.

I miss the appreciation of certain fine values that are present in Russia, as, for example, in the typical American reaction to "the committee rooms . . . attached to every factory . . . with the red tablecloth-covered table and the inevitable water bottle . . ., a depressing sight, as one recalls the appalling wastage of human time and energy that is taken up in the Committee meetings held in them" (p. 6). Almost every observer agrees that Russia must do more and talk less, but the other side of the shield is a consciousness of vital purpose on the part of many of the underlying population that is invigorating. Hoover misses it entirely.

Occasionally he is guilty of minor misstatements, as, for example, on page 249, with reference to the five day week: "Since the probabilities are that members of the same family will not have the same free day, the uninterrupted working week has also been a factor in accelerating the break-up of the family." Members of a family may have the same day off. The point is not significant, except as one finds the errors all running in one direction.

Despite its limitations the book is a real addition to our knowledge of the Soviet Union. Mr. Hoover writes well and has observed much; even his personal reactions are worth knowing.

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Now that this book and other generalized studies of the last year have appeared, the pressing need is for other types of study. The subject matter of Russia is too chaotic to lend itself to easy generalization. There is no series of monographic studies of the details that may be synthesized and interpreted against personal observation. Finally the general subject of Soviet Russia still involves too much the passions and prejudices of the observer; the greatest strain that can reasonably be put upon the scientific spirit is an investigation of some closely defined subject. Such was the plan of study by the group whose reports of a summer of research in 1927 were edited by Tugwell. Though the work is out of date, it would be well if it had served as a model to students who followed. Before we can really generalize well there must be at hand a series of painfully detailed studies written by specialists.

A. F. HINRICHS

BROWN UNIVERSITY

England's Crisis. By ANDRÉ SIEGFRIED. Translated by H. H. and Doris Hemming. New York, Harcourt, Brace and Company, 1931.—317 pp. $3.00.

Brilliantly M. Siegfried turns his powerful searchlight from America to his neighbor across the Channel. The picture presented has the qualities inherent in such a treatment skilfully done by a highly trained French mind: impersonality, proportion, simplicity of outline, emphasis on leading features and subordination of minor detail, and the impression of seeing things in the large from afar, though rarely to the extent of remoteness and unreality.

M. Siegfried is interested, as have been many Germans before the war and Frenchmen since, in trying to analyze rigorously those underlying economic factors and to some extent the accompanying social and political forces as well, which have built England a place of preëminence in the modern world. He notes the changes which have undermined her exclusive advantages. He points out the measures that she must take to hold her own in the new world of the twentieth century and the psychological hindrances to their adoption. At the point where prediction is the next step, the book closes abruptly. The author has endeavored to arouse England to the seriousness of her situation. His reiterated "Wake up, England" is his message. England must choose her path for herself. That the choice is being made, in at least some respects,

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within a few months of his call, may be the result of a more effective process of awakening than any book: the withdrawal by Frenchmen of gold from the Bank of England that forced immediate action to meet the resulting financial crisis. If England shows real vigor, decision and foresight in this aspect of her problems, the fact will justify the realistic but somewhat inconsistent note of optimism on which the book ends despite its earlier pessimistic tone. In any case those who are watching closely England's policy will find M. Siegfried's interpretations highly interesting background for the events of the next few years.

The introduction sketches with broad strokes the position of England in the nineteenth century. The period from 1815 to 1914 is taken as one of unbroken well-being, reaching a climax at about 1880 when Germany, England's first serious rival, began gradually to threaten England's happy monopoly of the markets of the world. In contrast, arguments and figures show how seriously England is beset today. Declining exports and unemployment are regarded as evidence of dangerous decay, no longer temporary but rather a permanent defect. While acknowledging the burdens which the war imposed upon England, M. Siegfried feels that the underlying causes of the decline are more far-reaching. These involve, on the one hand, conditions beyond England's control: the wider spread of industry over the earth, stimulated by the desire of each nation for self-sufficiency, and the fact that altered methods of production have made resources of coal and iron no longer the preponderating asset that they were before the days of oil and electricity. The internal causes of England's slipping from her easy preëminence he focuses in a single point. "English manufacturing costs are among the highest in the world. If this situation continues, any economic structure based on exports is faced with inevitable ruin. Can England do anything or, is this evil, by its very nature, one that cannot be grappled with? This is the germ of the British problem" (p. 57). He seeks the causes of these excessive costs, finding them in the monetary policy that restored the pound sterling to parity with the dollar too early, the maintenance of wages at an inflated level, antiquated methods in industry, the heavy burden of unemployment, excess of imports over exports, all made more serious by the growing strength of England's competitors. Of possible methods of meeting the situation some are already in operation, such as the declining birth-rate, the development of new industry in the southern counties, the increasing investment of capital outside of

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England over the face of the earth. While these adjustments have helped to create a kind of equilibrium, on the basis of which continuous national existence is possible, they and the pegged wage-scale and the dole are means of making life endurable rather than expressions of the determination to extend England's greatness that characterized the preceding age.

This apathy in the face of urgent problems M. Siegfried attributes to English pride, self-satisfaction, a mental laziness that refuses even to formulate the problems, and unwillingness to make sacrifices of comfort and leisure. "England seems to be wanting in vitality" (p. 177). Back of the attitude lies the surrender of the old political leadership of the aristocrats to the claims of the masses, not yet educated to a sense of responsibility for the welfare of the country as a whole. The eagerness of all parties to seek votes by catering to the wishes of the hordes of wage-earners offers a serious obstacle to any effort at grappling vigorously with the dangers to England's economic safety.

The positive remedies that have been suggested are lucidly stated and their implications critically examined in some of the most interesting and valuable chapters of the book. Rationalization of industry, inflation of currency, and protection are considered briefly. More thorough is the study of imperial preference. The issue is resolved into the questions whether or not England can give up her traditional policy of freedom in international relations, and, if her old economic isolation is no longer possible, what should be her relations with the other parts of the world. Will she choose close association with the Empire, the Continent, the United States? After a few considerations, the theoretical analysis ceases and M. Siegfried relies on his knowledge of England when he concludes that she will probably not make an exclusive choice, but will suit herself to conditions as they arise. "The Empire, and the spirit of England on which it thrives, have unlimited powers of adaptation and life."

From beginning to end the book shows a long familiarity with England. Its criticisms, while outspoken and severe, are objective and never unfriendly. It has been thoughtfully written, even beautifully to judge from the obviously faithful translation of H. H. and Doris Hemming. The rigid subordination of detail to main points results in some generalizations that arouse question. At times subjects are barely touched that would have been very interesting had they been developed more fully—as, for instance,

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the problem of the relation of banking to the control of industry. A longer time-perspective would have necessitated a difference of emphasis and would have called for consideration of broader questions about the foundations of the present economic order. A shorter one would have forced fuller treatment of complicating factors, especially those which are the aftermath of war. The inclusion of something of both would have meant a more satisfying work but would have weakened the effectiveness of the exposition and have appealed to a smaller group of readers. English sources are used, notably the reports of commissioners in which from time to time England has undergone a severe self-examination, but the point of view is foreign. While France is not often mentioned, French axioms of political and orthodox economic theory and ethics underlie many of the comments. At moments, M. Siegfried confesses the foreigner's difficulty in entering fully into an alien psychology. He makes an elaborate attempt to explain on the basis of racial sympathy why England in 1921 was willing to concede naval parity to the United States. But he fails to note that while England yielded in words, she gained in fact. At that moment America had been aroused by the war to the importance of a strong navy. Not for decades had there been so popular a demand for large appropriations for warships. England was too heavily burdened by debt to enter upon an orgy of spending. Had she insisted on continued supremacy American suspicion would have been aroused and a race of naval armaments must have followed. England gracefully accepted the principle of equality and the United States has never built enough ships to reach it. This characteristically British diplomacy seems astute rather than "defeatist" as he calls it. But if one is led to challenge statements or interpretations at times, so much the better, for, as the author says, what is needed is thinking and his assertions are provocative of thought.

JUDITH BLOW WILLIAMS

WELLESLEY COLLEGE

Germany and the Diplomatic Revolution. By ORON JAMES HALE. Philadelphia, University of Pennsylvania Press, 1931.—ix, 233 pp. $2.50.

Although every student of international relations is keenly aware that the press plays an important rôle in many a diplomatic negotiation, and the various collections of prewar diplomatic documents are full of reports on what the newspapers were saying, discussion of

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the problem has been largely confined to generalities. Consequently a "case study" like the present book is most welcome. The author does not attempt to retell in detail the story already set forth in E. N. Anderson's *The First Moroccan Crisis,* to which he frequently refers. Rather his purpose is to show on the one hand how the press of France, Germany and England reacted to the *entente cordiale* of 1904 and the subsequent Moroccan crisis, and on the other hand—which is decidedly the more important—to discover, if possible, what effects the press had on the several national policies. By consulting papers and periodicals of every shade of opinion and to some extent provincial as well as metropolitan organs, he has been able to establish his conclusions with considerable definiteness.

On the first point, the verdict is somewhat unexpected. Although the question at issue—Morocco—concerned primarily France and Germany, the press of both countries exhibited unusual restraint, the German largely because it was constantly receiving directions from the foreign office. But "Anglo-German press relations formed an unbroken chain of misunderstandings, false statements, malicious suppositions, invidious criticisms, and acrimonious polemics" (p. 211).

To the second problem, Mr. Hale makes several noteworthy contributions. (1) The enthusiasm with which the British press supported Delcassé in June, 1905, made many Frenchmen fear that Great Britain was trying to force France into war with Germany and strengthened the hands of those politicians who were anxious to get rid of the unpopular foreign minister. (2) The *Matin* revelations of October, 1905, concerning the supposed German aims in Morocco and an alleged British offer of military support came at the moment when the Russian government was preparing to sound France on her possible adhesion to the Treaty of Björkö. French opinion, already greatly excited by the hectoring policy of Germany since the fall of Delcassé, now swung round to the British orientation previously under suspicion—and the Russian ambassador in Paris advised his government that France was not to be won for the German Emperor's Continental league. In Germany also the revelations had their effect, for Bülow told Tirpitz that "he might make his naval demands as high as he wished in the supplementary naval bill that was in preparation" (p. 199).

Mr. Hale is inclined to minimize the part played by Germany in bringing about the fall of Delcassé, quoting from various papers to show that the unfortunate minister was gradually abandoned by one

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after another of his supporters. It is also clear that internal party politics and the personality of the minister had much to do with the *débâcle*. Still the repeated hints and eventual threats to be found in *Die Grosse Politik* leave no doubt that German policy had determined on the elimination of Delcassé, and the course pursued by it after his fall showed the French politicians that they had walked into a trap.

A special chapter is devoted to the mission of Prince Henckel von Donnersmarck, who was long supposed to have been sent to Paris to warn Rouvier, the premier, of the necessity of sacrificing Delcassé. By a neat peace of historical criticism, Mr. Hale raises doubts as to the official or even semi-official character of Donnersmarck's action or the authenticity of his communication. As it happens, M. Maurice Paléologue, in the *Revue des Deux Mondes* for June 15, 1931, has thrown some new light on the problem. It appears that Donnersmarck did use threatening language, on May 8, 1905, to Francis Charmes and that Rouvier was informed; but M. Paléologue's diary does not help determine whether he was authorized to do so. Whatever the truth, the point is, as Mr. Hale shows, that the revelations of the *Gaulois* in June, 1905, were accepted as truth and greatly increased the difficulties of a Franco-German understanding.

It is a pity that Mr. Hale is not consistent in the use of "von" before German names (it is not necessary, and is not used by the Germans, when only the surname is given), and that he constantly writes "due to" when he means "because of". These minor deficiencies do not, of course, detract from the value of an eminently useful book.

BERNADOTTE E. SCHMITT

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ÉTUDES INTERNATIONALES, GENEVA

Caribbean Backgrounds and Prospects. By CHESTER LLOYD JONES. New York, D. Appleton and Company, 1931.—viii, 354 pp. $4.00.

This well-tempered study in regional economics is a welcome contribution to a field not suffering from overproduction in scholarship. It does not seek to present detailed structural or institutional analysis. Its purpose rather is to review certain recurring factors in the economic life of all the Caribbean countries, and to estimate their probable trends in these respects. The wide cultural, racial and physiographic differences between these countries form a consider-

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able obstacle to this approach. Nevertheless the comparative analysis was well worth undertaking.

Sociological factors—race, health and education—are the first point of attack. Professor Jones holds that they have been basic in the cultural retardation of the Caribbean. The predominance of the Negro in the Antilles he ascribes not, as Waldo Frank, to the Africanizing tendency of American big business, but to historic circumstances and differential fertility. Without flourishing theoretical dogmas he feels that social and economic advance is most certain in areas under the stable political control of European stocks. There is a trend to improvement in health and education, Dr. Jones believes, despite adverse indications which he sets forth. Its vigorous continuance is a necessary prerequisite for any considerable further economic development of the region.

Descriptive chapters follow, portraying basic export industries—sugar, coffee, fruit, petroleum—which lead into a discussion of "extractive industries" (chap. 9) and of the difficulties of diversification (chap. 10). After a summary of general trends of Caribbean commerce and of United States trade in the area, the study is rounded out with a substantial chapter on Public Loans and a briefer survey of Foreign Investments.

While Professor Jones is ready to criticize in detail many of the industrial and financial phenomena which accompany the activities of American capital and enterprise abroad, he is not of those who regard the latter as a "menace", or as specially harmful to undeveloped countries. Development, he seems to hold, is a good thing *per se*. It brings pay-rolls, industriousness, revenues for the government, interests powerful in support of social order; and it encourages local interests to engage in complementary activities. The sugar, fruit and petroleum industries, he holds, have brought this "development" to the countries in which they are established. True, the sugar industry has been unduly favored by tax policy in Cuba and Porto Rico. True, too many foreign-owned industries have depended upon imported labor of relatively inferior cultural standards. True, "extractive industry" is both an intelligible concept and a demonstrable fact. Nevertheless Professor Jones insists that profits have been ploughed back into local properties to a great extent, perhaps so far as conditions justified; that expenditures for labor and materials have stimulated economic activity throughout the respective countries.

Here is a fair beginning for the serious investigation of problems

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that have too long been burked by critics and paladins of American foreign enterprise. The concepts are somewhat blurred, however; and Professor Jones ignores the type of enterprise that is economically neutral with respect to the development of the country in which it is established.

The argument (pp. 309-10) that Caribbean dependence upon the foreigner is "neither without precedent nor necessarily alarming" and that "cooperation with foreign capital" may be "a means of winning their economic independence" seems to the reviewer at least optimistic. True, it is difficult to find a Caribbean country in which so much as twenty per cent of the wealth has passed into foreign hands. But it is active wealth and key resources which have so passed. The reviewer can recall no comparable situation in a country which has heretofore won economic independence.

Professor Jones must not be thought to be an imperialist. He believes not only in independence but in independence all around. It required a robust faith indeed to predict it for Caribbean countries after writing the devastating chapter on foreign loans. Dr. Jones is not at his best in sketching the history of these loans. His account of the Haitian debt relations around 1915 is definitely misleading in implying that the Haitians muddled their finances, while the Americans kept up the debt service (p. 256). Cuba did not default in 1921 (p. 264) in the sense defined in note 6, page 249, although there was "temporary irregularity" (Nicaragua case, p. 269). The table of defaults (p. 248) is valuable, but less significant perhaps than would have been one showing net interest and principal payments realized by creditors. Nevertheless critics of American financial arrangements with the Caribbean states will find here chapter and verse to reinforce their contentions. It has been charged, and is true, that there are very large margins between the price paid by bankers for many of the loans, and the price at which they are floated to the public; that this amounts to a concealment of important facts bearing upon the credit position of the country, besides implying a substantial increase in the real interest burden; that half-statements are made which do in fact deceive the unwary investor; that a market is frequently "made" to support the bond issue; and that the financial "controls" do not ensure in most cases either wise or honest use of the money and do give investors an illusory confidence in their security. Here is the best analysis of the controls which the reviewer has seen. The author argues that they have been a steadying influence upon finance and other economic conditions in the countries concerned.

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Foreign capital is essential for the development of the Caribbean. It is the special merit of Dr. Jones that while urging this strongly, he does not portray it as a magic wand. "Health measures, laws on immigration, educational enterprises, the opening up of undeveloped resources, tax policies affecting industry, encouragement of the diversification of products, budgetary practice, programs for foreign borrowing, road building" (p. 323)—these to Dr. Jones's mind are the main problems whose solution conditions Caribbean progress. They are primarily the domestic problems of the countries concerned. It is this circumstance that best supports the author's generous hopes.

LELAND H. JENKS

WELLESLEY COLLEGE

The Fight for Peace. By DEVERE ALLEN. New York, The Macmillan Company, 1930.—xi, 740 pp. $5.00.

The peace movement, long neglected by historians, has recently been made the subject of several excellent studies. Among these this interesting volume belongs, judged by its factual content, although its organization and the author's intent are not primarily historical. Here one finds more or less full sketches of the pacifism of the early Christians and of peculiar sects such as the Albigenses, Moravians, Doukhobors and Quakers; of plans for international organization such as those of Penn, Saint-Pierre and Ladd; of the private international peace conferences of the latter half of the nineteenth century; of the practice of arbitration, including American refusals to arbitrate; of the mechanization of war and the development of conscription. The bulk of the book, however, is concerned with the American peace movement. In this field the author displays thorough acquaintance with an extensive literature of over a century and presents the story with the aid of liberal excerpts. The opinions, personalities, and careers in the peace movement of its foremost figures—David L. Dodge, Noah Worcester, William Ladd, Elihu Burritt, George C. Beckwith, Alfred H. Love—and others hardly less important are recovered from the ill-merited oblivion to which they have generally been left by historians. One learns of the advocacy of a peace department by a signer of the Declaration of Independence and something of the history of peace prizes and peace flags. The relation of the peace movement to abolition, to the agitation for women's rights, to literalism versus liberalism in religion, all appear. The separation of the American movement from organized labor, in marked contrast to the situation abroad, is discussed.

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In spite of its historical content, however, this volume is by no means simply a history. Mr. Allen, editor of *The World Tomorrow* and an active participant in the radical peace movement since 1917, is not content with the rôle of narrator. The book is intended as a contribution to, as well as an account of, the fight for peace. Consequently, the arguments which have been made against war are not merely presented in the words of the older writers; their present relevancy is examined and affirmed. The tactics of the movement are not merely described but are evaluated and criticized from the author's point of view.

Mr. Allen holds that non-violence is superior to physical force, for both resistance and attack. Defensive war is obnoxious to him as well as aggressive: and not merely for the practical reason that the partiality of governments and peoples is such that the plea of "defense" can mask aggression, nor for the reason that war once begun invariably extends its aims beyond the bounds of reason and justice, but because all warfare, whatever its aim, is essentially aggressive action (pp. 70, 78-80). War is the worst injustice (p. 181). It is security against war and not of some political or territorial status that is supremely desirable (p. 85). Such security can be achieved not by removing every cause which may lead to war but by removing men's willingness to engage in war (pp. 85, 161-162). This is not to disregard the importance of justice as the defenders of defensive war hasten to charge. There is far better hope for the triumph of justice through peace than through war. If men are always ready to spring to arms in defense of justice, human fallibility will insure that resort to war will usually be in behalf of injustice. Seek justice earnestly to be sure, but with war outlawed, outmoraled, and outcustomed as an alleged means, for it cannot be a true one.

The proper aim for the peace movement, then, is to persuade men to repudiate war unconditionally. The usual approval of defensive war by the American movement is carefully traced and criticized. An informing account is given of the extent and organization of war resistance since the World War and there is a persuasive chapter in behalf of the movement. Mr. Allen justifies war resistance on the ground of social utility rather than from the point of view of the individual conscience. He views it as the best means whereby a minority can most strongly oppose a great social evil. He vindicates the individual's right to disobey government by the usual revolutionary arguments against unconditional submission to authority (pp. 655-660).

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Though recognizing that the development of international organization is important, Mr. Allen looks askance at the League, Locarno, and such proposals as the Geneva Protocol because they involve forceful sanctions (pp. 108 *et seq.*) Even the Levinson outlawry proposal and the Kellogg Pact are marred by their toleration of the right of defense (pp. 185 *et seq.*) In general the treatment of international organization is not only less sympathetic but less full and adequate than that of the peace movement. This deficiency is reflected in the bibliographical references, especially of chapter six.

While condemning physical force as between nations, Mr. Allen, unlike many believers in non-violence, would permit it for ordinary police action (pp. 77, 536-538). The difference between police and military force lies in their control, in one case by a unitary and in the other by independent authorities. Given a suitable international authority, might not force in come cases be an appropriate means of securing peace and justice? Since force is controlled rather than eliminated in the closer relations, may there not be greater hope of controlling it through international organization than of eliminating it entirely? Mr. Allen never squarely faces the question of the desirability of an international organization of force. Instead he points to the immediate practical difficulties of defining an aggressor, of keeping treaties in conformity with justice, and of persuading American opinion to approve definite international commitments (pp. 70 *et seq.*) In spite of a discouraging recital of the proneness, even of pacifists, to support particular wars, he does not dismiss the desirability of pacifism on the ground of men's disinclination for it. International organization is likewise entitled to consideration on its theoretical merits.

ROBERT C. STEVENSON

UNIVERSITY OF IDAHO
SOUTHERN BRANCH

The Mixed Courts of Egypt. By JASPER YEATES BRINTON. New Haven, Yale University Press, 1930.—xxvii, 416 pp. $5.00.

A good historian should be judicially minded and a good judge should be historically minded. It is not enough to know the law and to apply it wisely. "To give justice" a good judge must know the history of the law and of juridical institutions. Judge Brinton of the Court of Appeals of the Mixed Courts of Egypt demonstrates in his illuminating volume the highest historical and judicial qualities of mind. In addition he possesses a fine sense of

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the political and diplomatic exigencies that affect the administration of justice in Egypt. His temper of mind is eminently fair and equitable. He describes accurately the origin and the evolution of the juridical rights of foreigners. He writes *con amore* of institutions which he and other American judges have served with distinction. He is never dull. What might easily have proved uninteresting in other hands he sets forth with clarity and charm. He never becomes muddled with meticulous, pedantic details but succeeds in giving one a definite understanding of the intricacies of judicial procedure. This is particularly evident in the chapters on The Jurisdiction of the Mixed Courts, and The Law of the Mixed Courts, subjects which would be confusing if analyzed in detail in a purely scholarly and academic manner. A most interesting chapter on a unique feature of the Mixed Courts is that on their legislative functions. The chapter on The Government before the Courts is most entertaining in summarizing the cases settled by the Mixed Courts, notably the suit brought by the distinguished archaeologist Howard Carter with reference to the tomb of Tutankhamen (p. 320).

The following conclusions reached by the author are of much significance (pp. 349-352).

> To many foreign observers the most striking fact in connection with the Mixed Courts would perhaps be this, that in spite of their capitulatory origin, and in a day when the Capitulations are decidedly out of fashion, the courts have so far won favor in Egyptian eyes, that, instead of their abolition being demanded, a plan which involves the extension of their powers is generally conceded by the Egyptians themselves to be in the interests of the country. . . .
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> . . . The country, moreover, appreciates the contribution which the courts have made to its national prosperity. They have solved a problem which lay at the very foundations of its commercial and industrial life. This was the problem of guaranteeing security to the foreign capital and enterprise upon which the modern development of the country has so largely depended. . . .
>
> . . . Another element which has had its influence in the past is the fact that the Mixed Courts, founded as they were before the British Occupation of Egypt, have enjoyed international protection and, as such, have been outside the sphere of influence, administratively speaking, of the occupying power. . . .
>
> . . . But there is another factor of much greater importance in commending the Mixed Courts to the good will of Egypt. They represent the surest and quickest road of escape from the extra-territorial infringement of sovereignty embodied in the Consular Courts and in the still remaining diplomatic control over legislation affecting foreigners. . . .

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> . . . Even were the present system of foreign representation to be gradually modified so as to eliminate, little by little, the foreign judges (as has been the case in the Native Courts), the practical needs of a cosmopolitan business community, and the existence of a well-developed jurisprudence and legal tradition, and of a French speaking Bar, might well suggest the indefinite continuance of the Mixed Courts long after its magistracy had lost its present international complexion.

The volume is thoroughly documented throughout and contains valuable appendices of documents including a statement of the attitude of the United States toward the Mixed Courts and suggested reforms. It also is provided with an excellent index, and a complete bibliography.

This volume should interest not only the specialists in extra-territorial law and students of Egyptian conditions but also all lovers of jurisprudence and those who are generously concerned with international institutions of such importance as the Mixed Courts of Egypt. It should likewise appeal to all who enjoy scholarly and judicial workmanship.

PHILIP MARSHALL BROWN

PRINCETON, NEW JERSEY

Public Debts and State Succession. By ERNST H. FEILCHENFELD. New York, The Macmillan Company, 1931.—xxx, 922 pp. $10.00.

A study of state succession is needed and welcome. This is a thorough study, by a systematic and analytical mind, of the "legal problems which arise when a state loses a part of its citizens and assets through loss of the whole or a part of its territory." It is mostly a historical study, and the author has no hobbies to ride. He is distinctly objective, so much so that he is at times abstruse. It is not a work in which the average student will find an answer to his questions, but a work in which the profound student will find materials upon which to build.

Some 578 out of 905 pages of text are devoted to the historical study; but the author warns the reader that this is not to be taken as indicative of the relative importance of the matters treated. It is claimed, with much justice, that a historical study has never before been made; certainly, for the purposes of this book, such a study is essential. The most important theoretical contributions, it appears, were made by the classical writers: the principles of all modern doctrines are to be found in Gentilis, Grotius and Pufendorf.

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Vattel contributed the essential distinction between domestic and foreign creditors. On the Continent, a rigid rule of positive law for state succession has been maintained; Anglo-American countries, on the other hand, have tended to regard the rules of succession as rules of justice, and subject to modification. England suffers in the narrative. It is pleasing to find that the distinction between conquest and cession which she affirmed in *Campbell v. Hall* and in the *West Rand Central Gold Mining Co.* case were denied by other states, and rejected by the American and British Claims Arbitration Tribunal.

Apparently, the rules developed remained much the same until the period after 1870, when economic imperialism led to disputes. During this period, the vast majority of writers agreed that all debts of annexed states should be maintained, and that in case of dismemberment they should be distributed. The theory of local benefits developed during this period. The principles of the Peace Treaties, the author thinks, will not last, since they were affected by the political and economic motives of the victors. The subject remains as controversial as ever today—a statement which the author evidences by his wide disagreement with the other important current work on the subject, by Sack.

The writer sets very strict standards for the determination of law. By these standards, he often denies asserted rules; but it is difficult to ascertain what, in his mind, determines the point at which custom becomes law. The only sources of law, he says, are custom and general recognition, but the differentiation between the two is not clear. The author rejects natural law, and even "general public law", which he says is "merely an attempt to base legal results on analogy from municipal law". This does not interpret the phrase as its supporters would mean it. He does not concede to individuals any rights in international law; and he denies the "international financial law" of Sack.

Applying his standards to state succession, Dr. Feilchenfeld asserts that "international law has not actually recognized general succession in the case of annexation or cession". His own theory is: "Transfer of territorial sovereignty is replacement with regard to certain jural relations", and each situation must be separately studied (pp. 620-621). In studying them he is led into many fields of law. He does not favor codification as a means of resolving the problem; he favors rather special administrative machinery, both for the protection of finances and for international legislation.

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The book is systematically organized, and written in succinct and authoritative style. The author depends heavily upon an earlier book, *Völkerrechtspolitik als Wissenschaft*. The use of the terms *ibid.* and *loc. cit.* is often careless (e. g., pp. 286, 569) and would make some citations difficult to trace. The book is a mine of information to the inquiring student—but not to the student who wishes his rules of law served to him on a platter.

CLYDE EAGLETON

NEW YORK UNIVERSITY

England in the Nineteenth Century 1801-1805. By A. F. FREMANTLE. New York, The Macmillan Company, 1929.—555 pp. $5.50.

England in the Nineteenth Century 1806-1810. By A. F. FREMANTLE. New York, The Macmillan Company, 1930.—510 pp. $5.75.

There is need of a full-length history of England in the nineteenth century, which should be both a survey and a synthesis. These volumes, with the exception of the two introductory chapters, cover the decade 1801-1810. A history of the century on the same scale would run to at least twenty volumes, formidable to a reader by their bulk; forbidding, if written in Mr. Fremantle's style. He has read widely and in many places where information is to be found. Apparently he is freer than most men from the class prejudice or party bias which sometimes colors the work of writers on modern history.

Judging from the two volumes published, little more can be said in favor of his qualifications for the task he has essayed. A reader sentenced to traverse these volumes wonders at times whether the pains and uncertainties encountered are due to the author's carelessness or to his inability to see through and to discriminate among the mass of facts he has gathered. His chapters are long and lack unity. Paragraphs are tedious and incoherent, some of them occupying from one to two pages. Even the sentences are uncertain in structure. Passages of description, on first reading, sometimes puzzle as much as they enlighten. Consider, for example, a sentence concerning the expansion of the Scotch capital in the eighteenth century (vol. II, p. 405):

> But this part of the country did not lend itself to town planning,

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> being owned by several proprietors, and in 1757 an Act of Parliament was obtained for Edinburgh which enabled Commissioners, including in their number the Town Council, to purchase from Heriot's Hospital a wide level tract on the north, divided from the Old Town by a loch, which was drained and bridged.

The author seems surest of himself when describing battles on land; he is less at home on the sea. Realizing that Trafalgar deserves more than passing notice, he does not wholly neglect the dramatic possibilities of the death in action of a national hero. But the story drags throughout. It begins (vol. I, p. 425) with Barham's suggestion that Nelson choose his own officers:

> This confident speech must have blown into the musty board-room like the free breath of the Atlantic Ocean, scattering the foul mists of suspicion and dissension and corruption which then hung about it, littered as it had been with Naval Inquiry papers, and with proceedings connected with a number of highly dishonourable charges which had been brought by one highly placed officer against another in the last few months.

After such a start, the author is not satisfied fourteen pages later to leave the dying Admiral as he kisses Hardy, pronounces his familiar last words, and expires. In the next sentence, beginning a paragraph two pages long, we learn:

> History loves to linger over a scene so touching and so glorious: the dying hero in the terrible cockpit below; above, the deck of the shattered Victory clustered around with her followers and prizes; the Royal Sovereign a short way off—like her, broken but undaunted, with her own group of prizes, and the ships which had helped to win them; in the water, the broken masts and sails and the boats, now on an errand of mercy among the drowning men—all labouring heavily in the swell; Dumanoir's four ships speeding away to the south-west, Gravina's to the northward; the Cape from which the battle takes its name visible eight miles to the south-east; the gathering storm and the setting sun.

About the middle of this paragraph the author moralizes:

> There are many imponderable things in war; and although Nelson was a great student of tactics from an early age, although Napoleon advised soldiers to read and re-read the battles of great captains, although Wellington kept Caesar's commentaries at his bedside, it is not possible to define in what way study brings to birth the crowning act which snatches victory from the skirts of opportunity.

Such an observer would do well to avoid the death-beds of great

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men. He describes Pitt's last moments in shorter sentences, but the effect is scarcely that intended (vol. I, p. 448):

> Even a visit on the 13th from Hawkesbury and Castlereagh to obtain his consent to the bitter necessity of the recall of Cathcart's troops did not quench his soul. On the following day Wellesley found his spirits high and his mind as vigorous as ever. But it was too much. After that visit he fainted.

With a narrative such as this, it is not worth while to point out that there are in the details numerous errors of fact and that the antecedents of the pronouns are sometimes not as clear to the reader as they probably were to the writer. The notes are arranged at the end of the volumes in a way which tends to obscure the fact that the author has not in every case obtained his information from the best places even among the books listed in the bibliographies. Recent monographs, which might have lightened the author's labors, are omitted from both notes and bibliographies. It is unfortunate that a work written with so much labor and published at so great expense is likely to serve so ill the audience to which it is addressed.

W. T. LAPRADE

DUKE UNIVERSITY

The Cambridge Ancient History. Volume VIII. *Rome and the Mediterranean 218-133 B. C.* New York, The Macmillan Company, 1930.—xxv, 840 pp. $9.50.

The Cambridge Ancient History. Volume III of plates. New York, The Macmillan Company, 1930.—199 pp. $3.75.

The period covered in this latest volume of the monumental Cambridge history series was one of the great formative epochs in the life of mankind. This age witnessed the destruction of Carthaginian power, the foundation of the Roman Empire, the triumph of Hellenism as the basis of Italian and western culture, the fall of Macedon, the beginnings of Roman diplomatic supremacy in the East, and the last attempts of the Greek states to achieve unity through federation, attempts unsuccessful but highly interesting and instructive in the evolution of European political institutions. In all, thirteen scholars contribute special studies to the volume. The result is wholly satisfactory from the point of view of continuity in subject matter and uniformity of style and treatment.

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The volume opens appropriately with a critical estimate of Polybius by T. R. Glover. It would be difficult to find a more concise and adequate appraisal of the greatest Hellenistic historian than Mr. Glover's statement: "He did know his world, and he is so large and sane and truthful." Three excellent chapters follow dealing with the Second Punic War. B. L. Hallward, the author, convincingly defends the thesis that Rome was the aggressor in this struggle. He attributes elements of sound statesmanship as well as brilliant military genius to Hannibal. He might have been more generous with Archimedes of Syracuse, who is dismissed with a single sentence. Professor Maurice Holleaux writes of Roman relations with the Greek East beginning with the alliance between Philip V and Hannibal and ending with the repulse and humiliation of Antiochus III by Rome. He believes that the Roman offensive against Philip following the Second Punic War was deliberately instigated by the war party in the Senate and that neither the Roman people nor Philip wanted to fight. The famous *lex de bello indicendo*, he says, was forced through on the strength of "an audacious lie", namely, that Philip had attacked Roman allies. Furthermore, he sees little of glory in the Roman victory at Cynoscephalae which was won "by no merit of their own" but was due "to the good fortune which never deserted them during their first two great wars in the East." Even so, M. Holleaux explains Roman policy in this quarter not on the grounds of studied imperialism but rather as a result of imaginary fears. P. V. M. Benecke deals with the final overthrow of the Macedonian monarchy and the complexities of Rome's relations with other parts of the Hellenistic world. His treatment of the Achaean League is not altogether adequate, deserving more space at least than the campaign of Pydna. His opinion that the destruction of Corinth was unmotivated by commercial ambitions and jealousies and that the crime, "like other crimes in history was in part salutary" is certainly open to question.

An unusually clear and penetrating chapter on the Romans in Spain is written by Professor A. Schulten. The ruthless exploitation of the country and the cruelty toward the native peoples are justly stressed. Nowhere did the Roman Republic demonstrate so early and so completely its failure to comprehend the problems of empire. Professor Tenney Frank surveys the political, social and economic development of Rome and Italy from the invasion of Hannibal to the middle of the second century. He is inclined to discount the stories of enormous profits derived from the large es-

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tates in Italy during this period. The beginnings of Latin literature are traced by Professor J. Wight Duff in a chapter worthy of his best contributions to this field. Cyril Bailey describes the fundamental changes in Roman religion during this age and the impact of Greek philosophical ideas. He correctly emphasizes the importance of Panaetius in the development of political theory in the late republic. The destruction of Carthage is related in a chapter written jointly by Mr. Hallward and M. P. Charlesworth. The latter contributes a brilliant piece of historical writing in his epilogue at the end of the chapter. The history of Syria and the Jews, more and more engaging the attention of scholars, is set forth for this period by Dr. E. R. Bevan. He gives a competent survey of the Maccabaean struggle and the establishment of the new theocratic Jewish state. Somewhere in the Cambridge series a special chapter should be devoted to the Hellenistic diaspora of the Jews. The material on Thrace is handled in splendid fashion by Professor Gawril Karazow. Three chapters are contributed by Professor M. I. Rostovtzeff on the Bosporan kingdom, Pergamum, Rhodes, Delos and Hellenistic commerce. Written by an acknowledged master, these sections serve to illuminate and complete the picture of life in the East just before the conquering advance of Rome. The volume ends with a careful study of Hellenistic art by Professor Bernard Ashmole. The index, dynastic tables, chronological charts, notes, bibliographies and references to sources are executed in the best tradition of modern scholarship.

The third volume of plates is designed to illustrate the material covered in the seventh and eighth volumes of the written series. In addition to the familiar aspects of Hellenistic culture the products of Celtic, Iberian, Thracian, Bosporan and Carthaginian civilization are shown.

STERLING TRACY

COLUMBIA UNIVERSITY

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BOOK NOTES

In a period of almost unprecedented economic distress an account of the evils which accompany modern industrial civilization is timely. In her recent work, *The Tragedies of Progress* (New York, E. P. Dutton and Company, 1931; ix, 329 pp. $3.75), Gina Lombroso presents a scathing indictment of large-scale industrialism—its waste of natural resources, its failure to prevent overproduction and unemployment, its emphasis upon advertising and spending, its soulless greed and imperialism, its destruction of the pride in work which characterized handicraft industry. Unfortunately the author gives the impression, until the last few pages, that she wishes to scrap modern machinery and to return to handicraft conditions. Only at the very end does she admit that machinery may prove beneficial to mankind if the proper adjustments are made. The application of Christian ethics, together with coöperation, decentralization of industry, and the abolition of artificial stimuli to production, are the remedies suggested. It is not easy to accept the author's contentions that the laboring man of today has less leisure than before the Industrial Revolution (p. 182), that the United States has restricted Italian immigration because the Italians are too thrifty (p. 212), that sweated labor is preferable to factory labor (p. 209), or that "the frenzy for 'hygiene' . . . threatens to suffocate our intellectual and social life" (p. 211). If the latter half of the book is marred by such distortions, the first half, which attempts to trace the development of capitalism and industrialism, is vitiated not only by an idealization of classical and medieval civilization but still more by numerous historical inaccuracies. The Young Pretender did not reach London (p. 52); Cabot did not circumnavigate Africa (p. 62); John Colet was not an abbot (p. 92); the Treaty of Ryswick was not signed in the same year as the Methuen Treaty (p. 119). Holland is repeatedly called a great commercial power before 1550, and on page 93 the statement is made that Holland reached "her industrial and commercial apogee in 1477".—JOHN G. GAZLEY, Dartmouth College.

Mr. Alvan T. Simonds, in 1929, announced a prize for the best essay written during that year on *The Federal Reserve System and the Control of Credit.* Dr. Walter Earl Spahr's volume bearing that title (New York, The Macmillan Company, 1931; xviii, 138 pp.

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$1.75) is the winning study. What the author has attempted to do in this little book is to give a general popular view of the notion of credit control in relation to business, then to indicate the extent to which the Federal Reserve system actually uses or is guided by the idea of credit control, and the limitations under which it must work. He first surveys the fundamental notions essential to the credit control principle, then outlines the mechanism of credit control (or, shall we say, the mechanism theoretically available for credit control) in the United States, compares with it the systems available or in service in certain foreign countries, and finally sketches the extent to which the idea of credit control has been developed in this country. So much of the volume as is devoted to laying the groundwork of the credit control notion is familiar and need not be here considered. The book gives a clear and, on the whole, substantially accurate idea of the hopes, aspirations and expectations of credit control propagandists, and does so in the main with but little bias. It notes some of the major difficulties and contradictions into which price stabilizers fall; and, while the author's own attitude is sufficiently evident, he cannot be charged with any undue partisanship. More interesting to the professional reader than these introductory chapters, plainly meant for popular consumption, is Dr. Spahr's treatment of the actual performance of the Reserve system during the few years before 1929 in connection with price and credit stabilization. He evidently shares in the general superstition so widely and so strongly insisted upon by stabilizers, that there was, before 1929, a period of comparative stability in prices, and that this was the result of credit policies applied through the machinery of the Federal Reserve system. This superstition has been repeatedly discredited by members of the Reserve Board in private conversation, semipublic addresses, testimony before congressional committees, and even in public speeches before commercial bodies. There is not the slightest warrant for it. A discussion of credit or discount policies during the years in question, therefore, cannot be a discussion of credit control, since none was exerted—perhaps could not have been. Of course, all this is far clearer now as a result of the testimony that has been given within a few months after Dr. Spahr laid down his pen. He cannot be wholly blamed for accepting the notion that so many economists have accepted. He notes, moreover, in his final summing up, that the "Reserve authorities have not developed anything like a rigid set of principles regarding the use of the various elements in this mechanism. They

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have taken the position rather consistently, that they cannot stabilize the price level and reserve the right to meet each situation [of what sort?] as it arises." If they do not think they can do a given thing and make no effort thereto, can it be supposed that they are nevertheless accomplishing it? If not, can we discuss the Reserve system as a price-stabilizing mechanism at all? And in that case how account for what has happened to prices during the year 1930-1931? All writing on this question is tentative until a good deal more agreement has been arrived at relative to fundamentals. There is no agreement thus far on the price stabilization question, or any phase of it. But Dr. Spahr's volume will serve a good purpose in presenting the essentials of the topic to the mind of the citizen who wants to know something about the situation and has become befogged with the jargon of price stabilization.—H. P. WILLIS.

The scope of the *Encyclopedia of Banking and Finance* (third edition), by Glenn G. Munn (New York, Bankers Publishing Company, 1931; viii, 765 pp. $10.00) is indicated by the subtitle: "A reference manual comprising over 3,275 terms relating to money, credit, banking practice, history, law, accounting and organization, trusts, finance, foreign exchange, investments, securities, speculation, business organization, insurance, commodities, markets, brokerage." The product is perhaps hardly entitled to the designation "encyclopedia", and scarcely to description as a "dictionary". It contains many articles that should properly be classed, on the score of thoroughness and value, as encyclopedic discussions, but there are many other captions intended merely to define some terms as used in brokerage slang or current usage, and that cannot lay claim to a more dignified status. Passing through three editions, the last appearing in 1931, the book has had the benefit of revision, and has not only been brought steadily up to date, but has been improved in numerous respects over its earlier forms. As it stands, it is, by whatever name described, a helpful book of financial definition and reference, and is particularly convenient because of the considerable number of reprints of texts of statutes bearing on finance and business. There are twenty-six of these, including matters as wide apart as the Federal Reserve Act and the Webb-Pomerene Act, though it should be noted that several such "acts", given separately, are really successive amendments to earlier statutes (e. g. the McFadden Branch Banking law of 1927). This encyclopedia, like every other newcomer, necessarily has to stand the test of comparison with other works in the same field, and particularly with the well-

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known British Dictionary. Viewed in this way, it suffers somewhat. The British work is no larger, but more careful and scholarly, and is especially good in its handling of banks and stock-exchange law. On the other hand, it of course pays far less attention to matters in which the American financial public is directly interested, and on which the work under review is full and complete. In these circumstances, it is to be regretted that more care was not taken by the compilers of the present volume in attaining entire accuracy. Serious errors of fact are to be found here and there throughout the volume. For example, in the article on the Federal Reserve System appears the following: "After four years of investigation this body [the National Monetary Commission] reported its findings to Congress, in full, in a plan which later became known as the 'Aldrich Plan'. After undergoing numerous modifications and revisions this report was finally submitted for the approval of Congress and culminated in the federal reserve Act". There is of course hardly an accurate statement in this quotation, as any consultation of the record must have shown the author. Similar inaccuracy may be noted at numerous points. For instance, the author of the article on the Federal Land Banks says, "The stock subscribed by the United States does receive dividends", apparently leaving readers with the impression that there is a good deal of such stock or that it is generally outstanding. In fact, the government owns stock in only two banks and less than $300,000 in all, while this small issue is steadily being retired. These are merely examples of misleading impressions left through hurried or careless writing. The general plan of the volume is effective.—H. P. WILLIS.

So much attention has been devoted in recent years to economic prediction that general treatises and manuals have found it difficult to keep up with the latest research activities of forecasting specialists. From this point of view, the appearance of Lewis H. Haney's *Business Forecasting* (Boston, Ginn and Company, 1931; xiv, 376 pp. $3.40) is gratifying. This book summarizes the commonly employed forecasting methods as applied both to the general situation and to specific industries; it appraises the significance of upward or downward movements in the more important statistical series; it contains a chapter on modern methods of utilizing and refining statistical data, and it sets forth what are regarded as the most significant features to the forecaster of our existing form of economic organization. Almost every investigator in this field admits a predilection in favor of a particular approach to forecasting prob-

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lems. Some forecasters depend principally upon a theory of momentums, others upon historical precedent; some emphasize the normal relationships of statistically determined series, and others the synthetical development of observation-derived hypotheses. Wherein among these various approaches do we find the preference of the author? In the preface we read: "The fundamental basis of scientific forecasting is economic law. . . . When a curve is out of line with its limiting or controlling factor, a readjustment becomes necessary. I am inclined to think that the search for sequences, the computation of correlations, and the projection of trend lines have been pushed too far at the expense of the study of causal relationships and economic equilibration". Consistently with this view, the author elaborates as his most novel contribution the P/V line or ratio. P is Bradstreet's price index, V is an adjusted series of railway freight tonnage. Usually, when P improves or stands considerably above normal, it is to be expected that V will be expanded as a consequence of entrepreneurs' endeavors to take advantage of the intensified demand. But if V has not thus grown, so that the P/V ratio increases, the outlook is for continued and rising economic activity. On the other hand, when the P/V ratio falls, a decline in activity is shortly to be predicted. This ratio, the author claims, has worked successfully throughout the last ten years and is the "only so-called barometer line which has stood that test". Without here expressing his own opinion regarding the probable workability of this ratio under other conditions that those which have recently prevailed, the reviewer would like to express agreement with the underlying philosophy. Much of what is now held to be scientific forecasting is mere empiricism and consists of the hit and miss search for early movers, and unique correlations; or rests upon the crude application of capriciously selected historical events. It is gratifying that the author expresses his skepticism regarding such devices.—HAROLD L. REED, Cornell University.

Inflation und Stabilisierung in Frankreich, 1914-1928, by Joseph Schmitz (Bonn, Kurt Schroeder, 1930; 227 pp. Rm. 11.00), is a careful though uninspired study of the movements of French finance since the outbreak of the war. Had it appeared two or three years earlier, it would have deserved extended attention from American as well as German students, but unfortunately the questions it examines have already been handled exhaustively, and I think rather better, in the works of Dr. Dulles, Professor Rogers and Professor Haig (to the first two of whom Dr. Schmitz acknowledges his

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indebtedness). The book also leaves something to be desired in that it does not seem to aim at establishing any very positive new conclusions, either in matters of theory or in matters of practice. Of those which are set forth, the more important ones have already been expounded by other writers.—JAMES W. ANGELL.

Scientific Disarmament, by Victor Lefebure (New York, The Macmillan Company, 1931; 318 pp. $2.50), is an authoritative treatment of the technical side of the armament question with particular reference to the time element in armament production. A superficial and generally accepted view of armaments is that they can be produced in quantities in a short time as by the waving of a wand and that the discovery of a new process of destruction can by itself upset the world's military equilibrium. If this view is accepted there can be no confidence in a plan of disarmament, for each nation will live in fear of its neighbors who may at any time gain such an armament superiority as will enable them to crush more peaceful peoples. Major Lefebure demonstrates that the production of armaments in quantities necessary for effective use in modern war requires a large amount of patient work in the assemblage of materials, the completion of numerous manufacturing processes, and the placing of the products into the proper containers or in such relation to other products as will enable them to be used with effect. The Handley-Page bomber required the assembly of 100,000 separate parts. The United States ordered a large number of these aircraft in the autumn of 1917 but only seven machines were completed by the date of the Armistice. In the case of Liberty motors, quantity production could not be started until a year after the conception of the engines in Washington. The time which it takes to transform ordinary industrial materials into the bulk production of armaments necessary in modern aggressive war is called the "conversion lag". The conversion lag in tank production was in the neighborhood of fifteen months during the World War and a similar period elapsed before mustard gas could be prepared by the Allies on a large scale. Liquid chlorine was being produced in quantities for industrial purposes at the outbreak of the war and the experience of the Allies before 1917 afforded valuable lessons to the United States. Despite this double advantage the United States was compelled to establish new production plants and five months elapsed between the breaking of ground for the chlorine units at the Edgwood Arsenal and the commencement of manufacture of this destructive chemical. The United States received

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the first deliveries on its Lewis gun contracts eight months after the initial orders had been placed, and it was more than a year before the contracting corporation was able to turn out 16,000 of these guns. Major Lefebure's conversion lag is an exceedingly valuable principle in the disarmament movement for it induces greater confidence in armament equilibrium. If the nations can be persuaded to reduce their armaments to a reasonable level of safety a great incentive for war will be removed. The general staffs, knowing that a long period must elapse before the requisite armaments and supplies for offensive operations can be built up, will not be able to plan sudden and crushing campaigns to overwhelm rival nations. When judged with regard to the timeliness of the subject, the importance of the point proved, and the wealth of material which the author brings to support his thesis, the book is really a superb piece of research.—BENJAMIN H. WILLIAMS, University of Pittsburgh.

Ten Years of World Co-operation (Geneva, Secretariat of the League of Nations, 1930; xi, 467 pp.) occupies a unique position among recent publications. It is, in a sense, an autobiography of the League of Nations, prepared by various members of the Secretariat. Although strictly speaking it is not one of the League's official publications, it may well be classed as a primary source. In the foreword, Sir Eric Drummond explains the place of the volume as follows: "This book cannot arrogate to itself the name of history. It is a statement of facts. It seeks neither to discern the causes of events nor to estimate their effects. . . . It is . . . simply a record which may . . . prove useful to the student and a source of indications to the more advanced scholar and the historian." The occasion for the appearance of the work was the tenth anniversary of the establishment of the League. No more fitting monument could have been devised. There are fifteen chapters in the book, each a concise record of the League's activities in a particular field. The subjects dealt with include the peaceful settlement of disputes; the organization of peace and disarmament; the codification of international law; international transit and communications; health; financial and economic coöperation; intellectual coöperation; the mandates system; the protection of minorities; and others. Not the least interesting chapter is the last, entitled "The League and Public Opinion." It concludes with the optimistic sentence: "The League is the sum of public opinion." Of considerable reference value, too, are the annexes to the book.

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They consist of the Covenant of the League, a short bibiliography of the publications of the League arranged to correspond with the chapter headings of the text, and an annotated bibliography of the chief works dealing with the League and catalogued in the Secretariat library. Unlike most other works of this type, the volume under consideration has a complete and clear index. As a manual explaining the source of the League's authority to deal with certain questions, the manner in which the League functions, and the achievements of the League thus far, the book is without a peer. It is eminently adapted to serve as teaching material, and at the same time makes highly interesting general reading matter. It is to be hoped that the League Secretariat will continue to prepare such records at regular and not-too-distant intervals. — WALTER C. LANGSAM, Columbia University.

The International Institute of Agriculture, by Asher Hobson (Berkeley, University of California Press, 1931; xi, 356 pp. $3.50) constitutes an interesting historical document, an illuminating case study in international organization and administration, and a contribution to a current international controversy which is both vigorous and, it seems, well based. Mr. Hobson was the American representative on the Permanent Committee of the International Institute of Agriculture from 1922 to 1929. He writes as a sympathetic biographer of David Lubin, whose ideas and efforts led to the original establishment of the Institute, as a believer in the cause of international agricultural organization, and as an American. The author gives first an account of the origins and early development of the Institute; the story is entertaining and deceptively innocent of the later tragic developments; actually the fundamental cause of those events appears at every step in the Institute's early history. Follows a formal presentation of the organization and activities of the Institute, but we soon rush into the highly critical treatment of its administrative procedure and the methods of control employed, and a discussion in similar vein of its juridical and political aspects—the position of the Permanent Committee and the attitude of the adhering governments. A chapter of conclusions recapitulates these criticisms and makes recommendations for the future. In brief, the author concludes that the Institute falls far short of performing the functions which it could perform and was intended to perform. It has failed because of the inferior quality of the personnel, and because of lack of devotion on the part of the directing officials to the cause of scientific study of agricultural problems.

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These inferior officials and administrative workers are retained because the Italian government exercises control over the Institute to that end. The Permanent Committee is, as a result of accident and intention, composed mainly (three-fifths) of Italians and does not interfere with this situation even when told to do so by the General Assembly. And here we come to the root of the evil. The adhering governments are not sufficiently concerned to insist upon reform. They were not sufficiently concerned originally to take up Lubin's scheme; they did so mainly out of courtesy to the Italian government and only after that government had first adopted the idea. Why the adhering governments are indifferent is a question outside the scope of Mr. Hobson's discussion. As is rather generally known, the United States has terminated its participation in the activities of the Institute. We should be glad to devote our interest and financial support to a truly international organization for scientific aid to agriculture, but not to an Italianized and inefficient Institute. In the meantime a working agreement has been adopted between the Institute of Agriculture and the League of Nations. This agreement, however, does not—naturally—alter the organization of, or the administrative procedure in, the Institute. It remains to be seen whether the action of the League in calling upon the Institute for certain results, and the general influence of coöperation with the League, will produce any changes in the Institute. Mr. Hobson has given us a valuable monograph upon the Institute of Agriculture and also upon international coöperation as such.—PITMAN B. POTTER, University of Wisconsin.

In *International Government* (New York, D. C. Heath and Company, 1931; xx, 736 pp. $5.00) Professor Edmund C. Mower offers a delineation of the way in which the modern Society of Nations governs itself. It is intended for the non-technical student and the general reader. It is intended to be general and comprehensive, in contrast to specialized legal, social (political, social, economic), or mechanistic (*sic*) treatments offered by others. It is intended to be informative rather than critical, and descriptive rather than analytical. The work opens with introductory chapters on the nature of international government, its origins and recent development, and possible future. Next the bases of international government are studied—the modern state, the society of states, national sovereignty and international law. There follow sections dealing with diplomacy, international administration, legislation, adjudication, the problem of war and the League of Nations. The

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text is written smoothly and quietly, without contentiousness or animosity. Counsels of wisdom are emitted here and there, and hopes for the future are indicated from time to time, but the propagandist element in the presentation is not very strong. The work is not a polemic. Professor Mower cannot, of course, escape certain difficult problems of political theory and practice in his survey. The content and validity of the concept of international government itself, the reconciliation of national sovereignty with international authority, the problem of sanctions—such are some of these problems. Professor Mower would not have his work judged by his treatment of these problems, for it is not upon the solution of such difficulties that he concentrates his attention. So for certain questions of arrangement. Whether treaty-making should be dealt with in the early section on diplomacy or in the later section on legislation (as it is) is a question of minor importance in this presentation. So is the order of presentation of the three functions executive, legislative and judicial (they actually are treated in that order). The author does not wish to be academic, pedantic or doctrinaire in his approach. It is to be hoped that Professor Mower's mellow presentation of his subject will have many readers. They cannot but be impressed with the author's sincere and simple faith. — PITMAN B. POTTER, University of Wisconsin.

The first of the Barbara Weinstock Lectures on the Morals of Trade — *The Lawful Pursuit of Gain* (Boston and New York, Houghton Mifflin Company, 1931; 144 pp. $1.25) by Max Radin —sets a standard that bodes well for the series as a whole. Professor Radin has penned a study fascinating to read, yet documented by a judicious selection of sources, both ancient and modern. After an introductory chapter pointing out that in ancient and medieval times merchandising, at least big business, was considered reputable, and speculation dishonorable, the author treats of the Law and the Hard Creditor. Herein the English and the Roman systems of Equity are outlined as also the measures provided both in English and in Roman law to ease the condition of the unlucky debtor. Interesting insights into ancient, medieval and modern theories about value as well as pertinent references to Greek, Roman and modern ideas about usury are contained in the chapter on the Rapacious Creditor. Morals and law, and more particularly seller's talk and advertising make up the bulk of Law and the Dishonest Vendor. It perhaps may be regretted that in the chapter on the

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Unfair Competitor, Professor Radin did not delve into the ancient materials; his remarks upon trademarks and unfair competition in medieval and modern times are, however, well worth while. A final chapter deals with Law and the Future of Business. All in all, this volume of legal thought, interspersed with juridical incidents of all ages, deserves to be read by lay and initiate. — A. ARTHUR SCHILLER, Columbia University.

Professor Henry W. Farnam asks the reader to excuse him for the "unusual, possibly unique" form of his new opus entitled *Shakespeare's Economics* (New Haven, Yale University Press, 1931; 187 pp. $2.50) but the task of combining belles lettres and economics is not unusual. In France Paul Louis has investigated the social types in the writings of Balzac and Zola; Professor Henri Sée has dedicated an essay to Molière as a painter of social conditions; in Germany there is a new current in literary criticism, represented by Bernard von Brentano. Shakespeare has inspired not only the authors and editors of the unique investigation *Shakespeare's England* and an investigation on money mentioned by Farnam, but also the famous *Der Kampf um's Recht* by the great Rudolf von Jhering. On the other hand Shakespeare's Cosmos is a true Encyclopedia of his time, and contains, of course, contemporary economics. Like *The Forsyte Saga* of Galsworthy, or *Buddenbrooks* of Thomas Mann, the French *Les Thibault*, the writings of Sinclair Lewis, or Graça Aranha's *Canaan*, Shakespeare is an outstanding source for understanding and interpreting the economic time-spirit and the social milieu. It is interesting to follow Farnam in his "voyage of discovery" and I wish he would make many other "occasional visits to his neighbor's estate". Farnam's equipment for this voyage is excellent; he has spent many years collecting material and studying the vast Shakespearean literature. Nevertheless it is to be feared that in spite of his historical knowledge, he has unconsciously modernized and systematized Shakespeare's economics. Not only was Shakespeare "entirely unconscious of being an economist", but he was not one. We can study Shakespeare as an illustration of the history of economic life and economic thought of the transition period from the Middle Ages, we can feel in his plays the pulse of the embryonic industrialism and the reflection of the great epoch of discoveries and adventures, but to represent his economics in the scheme of a theoretical textbook of the twentieth century—this is surely going too far. It is really a pity that Farnam did not prefer the viewpoint of an economic historian. Shakespeare

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often interprets better than the professional historians the origin of modern capitalism, and especially the origin of the capitalistic spirit, one of the most complicated problems of economic history. Especially in *The Merchant of Venice* the "clash between the medieval and the modern conceptions" becomes violent, but not only regarding "interest", as Farnam thinks. Shylock's belief that it is proper to take interest is not less embryonically capitalistic than the enterprising spirit of the merchant Antonio who is proud of his power ("try what my credit can in Venice"). They both are representatives of the transition period toward a new time. The pioneer's spirit is to be traced in other Renaissance plays, like *The Taming of the Shrew, The Two Gentlemen of Verona, As You Like It* and even *Romeo and Juliet.* Here, in the lagoons of Venice, in the Italy of the Renaissance, Shakespeare is emphasizing the origin of the modern capitalistic spirit and, I think, a careful study by historians will give new illustrations and proofs of the scholarly works by Davidson, Strieder and Heynen. But in spite of these reflections it is a pleasure to read and re-read Farnam's brilliant and stimulating book.—J. F. NORMANO, Cambridge, Mass.

A study of *Restriction of Output among Unorganized Workers*, by Stanley B. Mathewson, with chapters by William M. Leiserson, Arthur E. Morgan and Henry S. Dennison (New York, The Viking Press, 1931; x, 213 pp. $3.00), has been sponsored by the Personnel Research Federation under a grant from the Social Science Research Council. Mr. Mathewson undertook a first-hand investigation and by making friendly personal contacts was able to gather information which enables him to describe the circumstances which tend to bring about restriction, or the variety of motives which lead workers to restrict output. The thesis is that restriction of output is quite general in practice and important in effect. The author uses the case method in presenting his data. The discussion of the time-study man and restriction in chapter iv and the practical suggestions made by Mr. Dennison in chapter x concerning this important phase of scientific management are valuable contributions. One of the most important problems confronting modern industry is to assure the workers of security in their jobs. In chapter v the author cites cases which seem to indicate that "the more employers fail to stabilize employment, the more the wage-earner attempts to steady his job by stretching out his work to cover slack periods". Regulation of output is one thing, but restriction of output is quite another matter. The latter undermines

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the character of the wage-earner. The manager must assume the obligations of leadership and lead the workers to the place where they will find joy in their work and be glad to give their best effort to the task assigned to them. This is a thought-provoking and stimulating book. Industrial psychologists and business managers should find it very helpful in pointing out problems that cannot be ignored.—WILLIAM J. H. COTTON, Duke University.

James A. Field, one of the most popular teachers among American economists, never wrote a book. His numerous friends and admirers will therefore welcome the publication of a volume of Field's *Essays on Population and Other Papers* (Chicago, University of Chicago Press, 1931; xxix, 440 pp. $3.50), edited by Helen Fisher Hohman. The attitude of Field toward the population problem is perhaps best illustrated by the concluding sentence of his paper "Eugenics and Demography" (1912): "For apart from evidence of the nature of human qualities numerical studies of population have little meaning." His interest in population questions arose from his interest in eugenics. When, twenty-five years ago, at the age of twenty-six, he wrote his essay "The Malthusian Controversy in England" (published for the first time in this volume, pp. 1-86), the decrease of fertility still seemed to be amply offset by the decrease of mortality. Ten years later, in his essay "Publicity by Prosecution" (pp. 215-227), he seemed to sense the quantitative import of birth control: "Whether or not mankind shall be reproduced becomes in a new sense a question of volition, and consequently a question of responsibility." But he was still inclined rather to see the qualitative import; "for the numbers, and perhaps yet more the quality, of the race are at stake". And in the paper "Paradoxes of Population Problems" (pp. 269-306), compiled by the editor from manuscript notes and lectures of Field, race suicide is defined as "the failure of the best parental stuff to maintain itself, either by absolute non-propagation or by relatively slight increase." As a matter of fact the volume should better have been called "Essays on Neo-Malthusianism and Eugenics". In judging Field's negative attitude toward recent numerical population trends, one should keep in mind that he died in 1927 and that illness prevented him from carrying on his work at least in the last year of his life. The low post-war status of population science in America has been rightly characterized by him as follows (p. 272): "We appear now to be in a stage in which the biologist and the statistician are supplanting the relativities of the socio-

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logical historian with statements of Nature's inflexible laws of population growth." He did not realize any more than his contemporaries the striking change that had occurred in population trends through a decrease in fertility which far exceeded the decrease of mortality. But his scholarly mind, of course, prevented him from indulging himself in absurdities such as using the logistic curve in forecasting the population growth of the United States, and his imagination enabled him to visualize with amazing clearness remote consequences of current events. In this respect it will suffice to quote the following passage from the excellent article "Population after the War" (pp. 228-235), published early in 1917: "Aside from all questions of future military establishments it has yet to be seen if the stupendous war debts that are now rolling up can be carried and eventually repaid without serious disturbances of what has been the prevailing rate and manner of the increase of population. Because just now victory in the European conflict seems supremely desirable to the several belligerents, they have seen fit to levy the cost of their respective struggles for victory upon a subsequent generation. Thus the economic choices of Englishmen and Frenchmen and Germans for years to come will to an oppressive degree have been already exercised for them, vicariously, and through the bloodshot eyes of deadlocked combatants. This is the natural consequence of deficit financiering in time of war. How disturbing may be the effects upon habits of consumption, and, through standards of living, upon population, can only be conjectured." — R. R. KUCZYNSKI, The Brookings Institution.

In a small book entitled *The Soviet Planned Economic Order* (Boston, World Peace Foundation, 1931; 258 pp. $2.50), William Henry Chamberlin describes clearly and concisely the economic structure and mechanism of Soviet Russia. Industry, commerce, agriculture and banking are briefly dealt with in relation to the planning system. The chapter which deals with the origin and background of the present Five Year Plan is particularly valuable. Mr. Chamberlin is quite right in viewing the Plan as essentially a means of building socialism in Russia, and he does yeoman service in combating the belief in the existence of a drift back to capitalism, which constantly recurs in the face of incontrovertible evidence against it. Mr. Chamberlin appraises the results of the first two years of the Plan and calls attention to the fact that such a rate of quantitative increase in productivity of

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industry has never been equaled in capitalistic countries. He recognizes, nevertheless that this has been accompanied by extremely low quality of product. He also makes plain the character of the sacrifices which the people have had to bear in order to attain such a degree of industrial progress as has been attained in the last two years. The author does not think that the success of socialism in Russia constitutes a threat to capitalistic countries. There is, perhaps, a contradiction between this judgment and the concluding sentence of the book: "As Kuibishev said, the race between the 'capitalist' and the 'socialist' economic systems has begun." There is an appendix which contains translations of important documents relating to Soviet economy.—CALVIN B. HOOVER, Duke University.

The X Y Z of Communism, by Ethan T. Colton (New York, The Macmillan Company, 1931; xiv, 423 pp. $3.00) is offered as an examination and appraisal of the attempt of the Soviet government and the Third International to put into force the main features of the Communist program as these were set forth by the Communists Bucharin and Preobraschensky some dozen years ago in the *A B C of Communism*. Each chapter is preceded by a quotation or series of quotations from the *A B C*. These are frequently supplemented in the body of the chapter by other statements of Communist spokesmen which are more specific in character or reveal further developments as to aim or method. The author's intention is to present an accurate picture of what the Communist doctrines have meant "in terms of action" but he makes no pretence of an emotionless impartiality. The book abounds in adverse judgments on the aims and methods of the Communist rulers of Russia. Much of the factual material is supported by references to Communist sources—press organs of the Party, reports of congresses, government documents etc. Little that is taken from such sources is new to readers of the literature in English on Russia. In addition the author draws on his "own first-hand knowledge" and the "riper experience of Russian collaborators . . . who under the circumstances must remain anonymous." The weight to be given to many of his statements, therefore, will vary with the reader's estimate of Mr. Colton's qualifications and opportunities as an observer and of the accuracy of the testimony supplied him by his anonymous collaborators. The author gives more space to the methods of attaining control, crushing opposition, and developing an "ideology" favorable to the Communist program than to what may be narrowly

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termed the economics of the Communist experiment. And the outlines of the organization of economic activity are left somewhat hazy in places. The treatment of the many-sided program for "creating Communist mentality", which runs through much more of the book than the chapter under that heading, presents a clearer picture. Mr. Colton's account of the reaction of the Communist youth to the activities intended to instill in them the real spirit of Communism and keep that spirit flaming is to this reviewer the most interesting part of the book. It is obvious that the value of Mr. Colton's work depends on the value to be attached to the comments of another independent observer and one who frankly states his opposition to the aims and methods of the dominant group in Russia and is patently glad to find evidences that all is not going well with this or that part of their program. The impression which the book makes is somewhat affected by obvious instances of carelessness either in proof-reading or in checking back to the sources. On the first page of the first chapter the date of the defeat of the Paris Commune is given as 1872. For another instance, in a quotation (p. 59) from the *Report of the Proceedings* of the 1921 Convention of the American Federation of Labor a statement (which is itself part of a quotation from another declaration) that the Bolshevists "belong to the old world of tsardom, not to the new world of socialism" is changed to read "they belong to the old world of Socialism."—DAVID A. MCCABE, Princeton University.

An interesting and valuable account of the multifarious activities performed during the great war by the Russian zemstvo institutions is presented in *Russian Local Government during the War and the Union of Zemstvos* by Tikhon J. Polner in collaboration with Prince Vladimir A. Obolensky and Sergius P. Turin with an introduction by Prince George L. Lvov, a volume of the Economic and Social History of the World War, Russian Series (published for the Carnegie Endowment for International Peace by the Yale University Press, New Haven, 1931; xv, 317 pp. $3.25). This work is all the more remarkable in view of the fact that its authors are exiles from Russia and that they lacked access to adequate documentary material. Their thorough training in the best methods of research and their own personal familiarity with the work of the zemstvos made possible this valuable contribution. The story of the development of the zemstvos from their organization in 1864 to their final dissolution after the Bolshevik Revolution in 1919 is a dramatic one and goes far to justify the authors' contention that it refutes the

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common assertion that absolutism is the only form of government adapted to Russia. From the very beginning the educated and more liberal classes eagerly participated in the work of local self-government and demonstrated that the zemstvos were far more effective agencies of government than the reactionary officials of the Tsar. Strictly limited by law as they were, especially after 1890, and forced to do their work under conditions rendered almost intolerable by the ever-present and suspicious agents of the central government, the zemstvos nevertheless did valiant work in promoting such services as education, health, welfare, agronomy, road building, and, in times of emergency, famine relief. During the Great War the scope of zemstvo activities greatly expanded. The Union of Zemstvos became a state within the state. The absolutist government practically broke down and had it not been for the extraordinary energy displayed by the Union in caring for the sick and wounded, in supplying aid to the families of soldiers and to the multitudes of refugees, in furnishing food and clothing and even war materials to the army, Russia would doubtless have been forced out of the war soon after its beginning. But important as were the national services of the zemstvos, they like all other institutions associated with the old régime were destroyed in the tempestuous revolution ushered in by the Bolsheviks. The ideals of the zemstvo leaders were those of bourgeois constitutionalists. These ideals of government were as repugnant to the Communists was were those of Tsarist reactionaries. The authors have preserved a calm and detached attitude in recounting the details of an attempt at state-making in the outcome of which they were intensely interested and because of the failure of which they suffered keen disappointment. They have placed students of government under obligations to them for producing so valuable and interesting a book under conditions so discouraging. — ELMER D. GRAPER, University of Pittsburgh.

A welcome study in Far Eastern diplomacy is Dr. Chang Chung-fu's *The Anglo-Japanese Alliance* (Baltimore, The Johns Hopkins Press, 1931; ix, 315 pp. $2.75). Believing that "the most important single factor in the international relations in the Far East in the first two decades of the twentieth century was the Anglo-Japanese Alliance", and that sufficient new documents, and other materials not available when Mr. G. Zay Wood and the late Professor Alfred P. Dennis prepared their studies of the alliance, warranted a reconsideration of the origins and developments of the

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Anglo-Japanese agreements of 1902, 1905 and 1911, Dr. Chang set himself the task of a resurvey of the international stage during the last two decades of the nineteenth century and the first two of the twentieth. The result is an interesting and fairly competent, if not profound, work in eight chapters with appendices and bibliography. Of particular import to the author was the bearing of the agreements upon the development of his native land, China. Characteristically critical of the policies of the powers with reference to that potentially powerful, but perennially weak, state, Dr. Chang omits analysis of the conditions in China which, to a considerable degree, account for the policies of the powers, particularly Great Britain and Japan. An attempt to obtain source materials in the Japanese language met with indifferent success; accordingly the author dropped back on works mainly in the English language for analysis of the Japanese viewpoint. In his discussion of the background of the alliance he was more fortunate in having access to certain documents in his native language, although these are not, for the most part, of outstanding significance. Of special interest to American students are the writer's analysis of Korean-American relations (in which he leans somewhat heavily upon Mr. Tyler Dennett for the facts but upon Messrs. F. U. McKenzie and Henry Chung for interpretation—a combination leaving something to be desired) and of the relations of the United States to the Alliance of 1911. The decision of the author to analyze the alliance from the standpoints of Korea and the United States in detail results in considerable repetition, but, possibly, a greater degree of clearness is attained for the non-discriminating reader. Several deviations from the accepted spelling of names may be noted: Alexiev for Alexeiev; Seul for Seoul; Takahara for Takahira; Sassini for Cassini; Mraviov for Muraviev. Dr. Chang's concluding chapter is admirably clear and concise. A fairly adequate bibliography and index are included, and the volume is well printed and bound. While Professor Dennis' earlier study is by no means superseded by the one under review, and one opines that the final analysis of the alliance has not yet appeared, the average student will find here a clear and convenient presentation of valuable material for which he may thank Dr. Chang and the faculty of political science of Johns Hopkins University.—H. F. MacNair, St. John's University, Shanghai, China.

A German psychoanalytical view of crime and punishment is presented in *The Criminal, the Judge, and the Public* (New York,

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The Macmillan Company, 1931; xx, 238 pp. $2.50) by Franz Alexander and Hugo Staub, translated from the German by Gregory Zilboorg. As in the case of most recent books concerning criminals, the authors maintain that the present-day manner of dealing with the criminal is in need of drastic change. Revisions are suggested in courtroom procedure, as well as in the after-care of the convict. The legal problems considered, in the matter of the revision of criminal procedure, are so surprisingly like our own American problems, that the reader is scarcely aware that the authors had in mind defects in the German criminal law. On the other hand, unless one is thoroughly convinced that the Ego, Super-Ego and the Id are scientific terms, the psychoanalytic approach seems somewhat foreign. In the future changes in criminal procedure the authors see little place for the medical expert of today, since he usually lacks psychoanalytic knowledge, which is said to be "the first branch of human knowledge which undertook to investigate the psychology of the real individual" (p. 25). One cannot but be impressed with the supreme confidence which the authors have in psychoanalysis. This psychoanalytic insight is so keen, we are told, that not only the motives of the strangest crimes may be laid bare, but even such baffling personality disorders as manic-depressive psychosis, kleptomania, the psychopathic personality, and the sex perversions are easily explained. The normal individual, and the reader must stop to wonder if there still be such beings, is not entirely overlooked. "The psychoanalyst, for instance, knows only too well that certain highly honored callings of great social importance, like those of the surgeon or the state attorney, are activated by a set of unconscious sadistic trends which not only play an important role in the given professional activities but are not infrequently the decisive factors in the matter of choosing a profession" (p. 28). Like the advocates of probation, an American contribution to criminology, the authors insist that one of the chief defects in our criminal procedure is a failure to deal with the offender as an individual. They are forced to admit that the introduction of "psychoanalytic criminology" would require that judges be trained in psychoanalysis, although cases are cited in which the authors have already had some little success in dealing with a sympathetic judge. No doubt existing judges and probation officers will be pleased to learn that the authors "do not believe that the *official recognition of the unconscious* will take place in the near future" (p. 80).—RAYMOND W. MURRAY, University of Notre Dame.

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